TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~589.~~ 295

WILLARD PARKER, JUNIOR, APPELLANT,

vs.

LOT M. MORRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

FILED OCTOBER 1, 1881.

SUPREME COURT OF THE UNITED STATES.

No. 589.

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vs.

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

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1 In the circuit court of the United States for the district of West Virginia.

WILLARD PARKER, JR., A CITIZEN AND INHABITANT of the State of New York, plaintiff, *vs.* WILLARD PARKER, A CITIZEN AND INHABITANT of the State of New York, and Lot M. Morrill, a citizen and inhabitant of the State of Maine, defendants.	In chancery.

TRANSCRIPT OF RECORD.

UNITED STATES OF AMERICA,
District of West Virginia, ss:

In the circuit court of the United States for said district at the September term thereof continued and held at Parkersburg, in said district, on the 25th day of September, 1875, the following order was made:

WILLARD PARKER, JR., A CITIZEN AND INHABITANT of said State of New York, plaintiff, *vs.* WILLARD PARKER, A CITIZEN AND INHABITANT of said State of New York, and Lot M. Morrill, a citizen and inhabitant of the State of Maine, defendants.	In chancery.

2 This day came Lot M. Morrill, one of the defendants in this cause, by his attorney, G. D. Camden, and filed a transcript of the record, paper, and proceedings had in this cause in the circuit court for the county of Jackson, in the State of West Virginia, together with a copy of the order of the circuit court of the said county of Jackson removing this cause into this court, and on his motion it is ordered that this cause be docketed in this court to be further proceeded in.

The record above mentioned is in word ands figures as follows, viz:

RECORD.

WEST VIRGINIA, *to wit:*

Pleas before the circuit court of Jackson County, held at the court-house thereof, on the 21st day of September, 1875.

Be it remembered that heretofore to wit, on the 14th day of April, 1773, came the plaintiff, Willard Parker, jr., by his attorney, and sued out of the clerk's office of the circuit court a summons in chancery against Willard Parker and Lot M. Morrill, which summons, together with the endorsement and return made thereon is in the words and figures, following, to wit:

Summons.

The State of West Va. to the sheriff of Jackson County greeting:

3 We command you that you summon Willard Parker and Lot M. Morrill to appear before the judge of our circuit court for Jack-

son County at rules, to be held in the clerk's office of said court on the first Monday in May next, to answer a bill in chancery, exhibited against them in said court by Willard Parker, jr., and have then and there this writ:

Witness N. S. Smith, clerk of our said court at the court-house of said county on the 14th day of April, 1873, and in the 10th year of the State.

N. S. SMITH, *Clerk.*

(Endorsment:) The within named Willard Parker & Lot M. Morrill are not found in my bail'wick, to execute the within process, April 30, 1873.

J. M. GREER, *S. J. C.*

And at another day to wit, at rules held in the clerk's office of said circuit court on the first Monday in May, 1873, came the plaintiff, by his attorney, and filed an affidavit which is in the words following, to wit:

WILLARD PARKER, JR.
vs.
WILLARD PARKER AND LOT M. MORRILL. } In chancery.

STATE OF WEST VIRGINIA,
Jackson County, to wit:

4 G. Parker, agent of Willard Parker, jr., the above-named plaintiff being duly sworn, says that the defendants, Willard Parker and Lot M. Morrill were, at the commencement of this suit and still are non-residents of the State of West Virginia.

G. PARKER.

Sworn to and subscribed before me this 7th day of May, 1873.

N. S. SMITH, *Clerk.*

And thereupon at the rules aforesaid on the said first Monday in May, 1873, the following order of publication was awarded against said defendants, Willard Parker and Lot M. Morrill, to wit:

STATE OF WEST VIRGINIA,
Jackson County, ss:

At rules held in the clerk's office of the circuit court of said Jackson County the 7th day of May, 1873.

WILLARD PARKER, JUN'R,
vs.
WILLARD PARKER & LOT M. MORRILL, D'F'TS. } In chancery.

The object of this suit is to have and obtain a portion of the tract of land in the bill and exhibits mentioned between the
5 plaintiff and defendant Willard Parker, according to their respective interests therein; and to remove a cloud upon the title of said plaintiff and defendant Parker to said land, created by a pretended claim to a part thereof set up by the defendant Lot M. Morrill. And it appearing by an affidavit filed in the papers in this cause that Willard Parker and Lot M. Morrill, named as defendants in the suit, are non-residents of West Virginia, it is ordered that such non-resi-

dent defendants appear here within one month after the first publication of this order, and do what is necessary to protect their interests in the premises.

Teste:

N. S. SMITH, *Clerk.*

The following is a copy of the affidavit annexed to said order of publication.

STATE OF WEST VIRGINIA,
Jackson County, to wit:

Personally appeared before me the undersigned authority, N. S. Smith, and made oath in due form of law, that the annexed order of publication was published once a week for four successive weeks in the Jackson County News a news paper published in the county of Jackson, commencing on the 8th day of May, 1873, and that a copy of the
6 same order was posted at the front door of the court-house, at least twenty days before the 15th day of September, 1873.

N. S. SMITH.

Taken sworn, and subscribed to before me, this 20th day of September, 1873.

J. L. ARMSTRONG,
Clerk County Court.

And at the same day to wit, at rules held in the clerk's office of said circuit court on the first Monday in May, 1873, came the said plaintiff, by his attorney, and filed his bill against the said defendants, which bill is in the words and figures following, to wit:

Bill.

The bill of complaint of Willard Parker, jr., of the city and State of New York, plaintiff, against Willard Parker, of the same city and State, and Lot M. Morrill, of the State of Maine, filed in the circuit court of Jackson County.

To the honorable Joseph Smith, judge of the said court:

The above-named plaintiff complains and says, that about the year 1795, one Samuel M. Hopkins, by virtue of two land-office treasury warrants of the State of Virginia, for one hundred thousand
7 acres each, numbered respectiv'ly 1622, and 1623, dated the 6th day of October, 1795, in due form of law, entered for survey and patent, 200,000 acres of waste and unappropriated land, as he then believed and understood, situate in the then county of Kanawha, in said State, but now mostly in the county of Jackson, in the State of West Virginia, and that on the 10th day of December, 1795, he caused the said land to be, in due form of law, surveyed by the surveyor of said county of Kanawha, a copy of the plat and certificate of which survey is herewith filed, as part of this bill, marked A. That by virtue of and in pursuance of said entry and survey, a grant from the commonwealth of Virginia was, on the 1st day of July, 1796, in due form of law, issued and delivered to said Samuel M. Hopkins, for the said 200,000 acres of land, a copy of which grant is herewith filed as part of this bill marked B. By reference to said grant it will be seen

that said survey was what is known as an inclusive survey, and included within its boundaries 227,460 acres of prior claims exclusive of the said 200,000 acres, and liberty was reserved in said grant for the several persons interested in said prior claims to carry them into grant, but how much, if any, of the said 227,460, if any such grant
8 was included in said patent was afterwards carried into grant, this plaintiff does not know.

That on the 22d day of June, 1808, by deed b'ar'g date that day, the said Samuel M. Hopkins, Oliver Wolcott, and Mary Watson, conveyed the said 200,000 acres of land to James T. Watson; a copy, of which deed is herewith filed as part of this bill, and marked C. That after the said James T. Watson became the owner of the said tract of land, he took actual possession of the whole of the lands included within the exterior bounds of the said grant and of his said deed, there being at that time no person in possession or claiming any portion of the said lands, and that he placed a great many tenants thereon, under leases from him, and in that way he commenced and carried on the settlement of what is now the said county of Jackson. This process was continued by said Watson for several years, during which time he removed to and settled upon said tract of land in its then wilderness state, about 186 families, all of whom became the tenants of the said Watson on said land, or purchasers from him for portions thereof. And this plaintiff further says that the said James T. Watson remained in uninterupted and undisputed possession
9 of the whole of the said land, within the exterior bounds of the said grant to Hopkins, by himself and his tenants, until the time of his death, which took place about the year 1839, and that during his lifetime he had the same regularly entered on the books of the commissioners of the revenue, and charged with all the taxes property chargeable thereon, and paid the same, so that no forfeiture thereof ever took place, so far as he was concerned; that at a sale of said tract of land, made by James H. Brown, a commissioner, under and by virtue of an act of the legislature of Virginia, passed February 21st, 1845, entitled "An act for the relief of James T. Watson, deceased, and others," one Peter Clark became the purchaser of the said tract of land, which sale and purchase of the said tract of land was confirmed by the circuit court of Jackson County, at the term thereof, 18 , and the same was conveyed by said commissioner to said Clark by deed, bear'g date the day of , 18 , a copy of which deed is herewith filed as part of this bill, marked D.

That the said Peter Clark and wife, by deed bearing date the 29th day of March, 1854, conveyed the said tract of land to William
10 H. Campbell, a copy of which deed is herewith filed as part of this bill, marked E; that the said Campbell and wife, by deed bear'g date the day of , 18 , conveyed the said tract of land to the defendant, Willard Parker; a copy of which deed is herewith filed as part of this bill, marked F.

That the said defendant Parker, by deed bear'g date the 2d day of November, 1872, conveyed to this plaintiff the one undivided twentieth part of the said tract of land, and that he is now owner in fee simple thereof.

And the plaintiff further says that the said defendant, Willard Parker, and those under whom he claims have paid all the taxes of every kind charged and chargeable on the said tract of land since the payment of taxes thereon, as aforesaid, by the said James T. Watson, and that no forfeiture thereof has accrued, so far as they or any of them are

concerned. This plaintiff further says that he and those under whom he claims have been in the quiet and peaceable possession of the said tract of land ever since the death of the said James T. Watson, and are still so in possession thereof; that the defendant Lot M. Morrill, who is a non-resident of this State, and a resident and citizen of the State of Maine, is falsely and fraudulently setting up a pretended
11 claim to a portion of the lands within the exterior bounds of the said Hopkins patent, under which this plaintiff and the defendant Parker claims the whole thereof, under one or more patents claimed by him to have been issued to Albert Gallatin and Savery De Val Colen, jointly or severally, prior to the issuing of the said Hopkins patent, and prior to the entry and survey on which the latter patent issued; but this plaintiff avers and charges that if any such patents ever issued the title to the lands therein mentioned has no validity either in law or equity against this plaintiff and the defendant Parker, because the said lands have all been forfeited to the commonwealth of Virginie, and to this for the non-payment of the taxes charged and chargeable thereon, and for the non-entry thereof on the books of the commissioners of the revenue, and of the assessors of the said county of Jackson, or any other county by the defendant Morrill, and those under whom he claims. And this plaintiff here avers and says that inasmuch as he and the defendant Willard Parker, and those under whom they claim, from the emenation of the Hopkins patent down to this time have always paid all the taxes of every kind charged and chargeable on the said land
12 conveyed by said patent to said Hopkins, and have been in the actual possession thereof, as aforesaid, the said forfeiture of the said lands embraced in said patent to Gallatin and De Val Couler, enures to the benefit of this plaintiff and the defendant Parker, and vests the title to said land in them; but this plaintiff further avers and says that the claims to said land so set up by the said Morrill is a cloud upon the title of this plaintiff and the defendant Parker to the said lands under the said Hopkins patent, and ought to be removed by this honorable court, whose province it is to do so.

And this plaintiff further says that he desires a pertition of the said tract of land between himself and the said defendant Parker, and that the interests of each of them therein should be hereafter held in severality.

This plaintiff therefore prays that a survey of the said tract of land, defini'g ac'urately the meets and bounds thereof, be made by a competent surveyor, and ascertain'g the quantity remaining after platting out the portions thereof conveyed to others; and then a partiti'n of the portion remain'g unsold be made between the defendant Parker
13 and this plaintiff of their respective interests therein, according to quantity, quality, and value. He also prays that the said fraudulent and pretended claim so set up by the said Lot M. Morrill to the said portions of said land be vacated and annulled, and removed therefrom, as a cloud upon the said tittle of the defendant Parker and the plaintiff, and for such other, further, and general relief in the premises as the nature of his case may require and the court may see fit to grant.

WILLARD PARKER, JR.,
Plaintiff.

RILEY & FERGUSON, *Sol's.*

The following are copies of the plat and certificate of survey; the grant from the commonwealth of Virginia to Samuel M. Hopkins; the

deed to James T. Watson from said Hopkins and others; the deed from James H. Brown, commissioner, to Peter C. Clark; the deed from said Clark and wife to William H. Campbell. The deed from said Campbell and wife to defendant Parker, and the deed from him to the plaintiff, which are filed with said bill and marked A, B, C, D, E, & F, respectiv'ly.

Robert Brooks, esquire, governor of the commonwealth of Vir-
14 ginia, to all whom these presents shall come greeting:

Know ye, that by virtue of two land-office treasury warrants numbered sixteen hundred and twenty-two and sixteen hundred and twenty-three, issued the sixth day of October, one thousand seven hundred and ninety-five, there is granted by the said commonwealth unto Samuel M. Hopkins a certain tract or parcel of land containing two hundred thousand acres, by survey, bear'g date the tenth day of December, one thousand seven hundred and ninety-five, lying and being in the county of Kanawha, and is bounded as follows, to wit: Beginning at a beech tree in a branch of the left-hand fork of Pocotatico, which runs thence nearly south, twenty degrees west, the same being corner to a survey of fifty-three thousand acres made for Samuel Hollinsworth; and thence run'ing north forty-five degrees west four thousand four hundred and ninety poles to a sugar-tree eight inches in diameter on the bank of a rivulett run'ing northeast, crossing the head branches of Mill Creek, and Eighteen Mile Creek as marked in the plat; thence north, crossing waters of Mill Creek, six hundred and seventy poles to a poplar eighteen inches diameter, marked S. M. H.
15 standing on the north side of a branch of Mill Creek run'ing northeasterly, close to the water; thence north forty-five degrees east eight hundred and forty poles, crossing several branches; also crossing Mill Creek, to a black oak nine inches in diameter, two small white oaks, and a gum, on the east bank of the creek, about eighty poles above the rapids, the black oak marked S. M. H.; thence north sixteen degrees, west one hundred and nine poles, crossing the creek twice, to a Spanish oak, three feet diameter, on the bank of the creek below the rapids, marked on two sides as a corner and also marked S. M. H., with a hatchet; thence down the creek by the different meanders thereof and binding thereon, eleven hundred and seventy-nine poles to the mouth of the creek on the upper side; thence up the Ohio River by the different meanders thereof and binding thereon, crossing several creeks as specified in the plat, ten thousand one hundred and twenty-six poles to an elm four feet in diameter, two sugar trees and a beech on the bank of the Ohio River, corner to the counties of Kanawha and Harrison; thence with the division line with said counties, south fifty-five degrees east, crossing waters of Lee Creek and Little Kana-
16 wha, as specified in the plat, eleven thousand three hundred and eighty-three poles to pointers; thence south forty-five degrees west three thousand nine hundred and forty-five poles to two beech trees by a branch of Little Kanawha, corner to a survey made for Thomas Mathews of two thousand acres, and with his line up said branch north sixty degrees west three hundred and sixty-two poles to a white oak, corner to said survey, and also corner to a survey of three thousand and ninety-eight acres, made for Charles Patterson and continue'g the same course with said Patterson's line five hundred and forty-six poles to two sugar-trees growing from one root, about twenty poles from a branch of Little Kanawha, crossing a branch of the same at three hundred

deed to James T. Watson from said Hopkins and others; the deed from James H. Brown, commissioner, to Peter C. Clark; the deed from said Clark and wife to William H. Campbell. The deed from said Campbell and wife to defendant Parker, and the deed from him to the plaintiff, which are filed with said bill and marked A, B, C, D, E, & F, respectiv'ly.

Robert Brooks, esquire, governor of the commonwealth of Vir-
14 ginia, to all whom these presents shall come greeting:

Know ye, that by virtue of two land-office treasury warrants numbered sixteen hundred and twenty-two and sixteen hundred and twenty-three, issued the sixth day of October, one thousand seven hundred and ninety-five, there is granted by the said commonwealth unto Samuel M. Hopkins a certain tract or parcel of land containing two hundred thousand acres, by survey, bear'g date the tenth day of December, one thousand seven hundred and ninety-five, lying and being in the county of Kanawha, and is bounded as follows, to wit: Beginning at a beech tree in a branch of the left-hand fork of Pocotatico, which runs thence nearly south, twenty degrees west, the same being corner to a survey of fifty-three thousand acres made for Samuel Hollinsworth; and thence run'ing north forty-five degrees west four thousand four hundred and ninety poles to a sugar-tree eight inches in diameter on the bank of a rivulett run'ing northeast, crossing the head branches of Mill Creek, and Eighteen Mile Creek as marked in the plat; thence north, crossing waters of Mill Creek, six hundred and seventy poles to a poplar eighteen inches diameter, marked S. M. H.
15 standing on the north side of a branch of Mill Creek run'ing northeasterly, close to the water; thence north forty-five degrees east eight hundred and forty poles, crossing several branches; also crossing Mill Creek, to a black oak nine inches in diameter, two small white oaks, and a gum, on the east bank of the creek, about eighty poles above the rapids, the black oak marked S. M. H.; thence north sixteen degrees, west one hundred and nine poles, crossing the creek twice, to a Spanish oak, three feet diameter, on the bank of the creek below the rapids, marked on two sides as a corner and also marked S. M. H., with a hatchet; thence down the creek by the different meanders thereof and binding thereon, eleven hundred and seventy-nine poles to the mouth of the creek on the upper side; thence up the Ohio River by the different meanders thereof and binding thereon, crossing several creeks as specified in the plat, ten thousand one hundred and twenty-six poles to an elm four feet in diameter, two sugar trees and a beech on the bank of the Ohio River, corner to the counties of Kanawha and Harrison; thence with the division line with said counties, south fifty-five degrees east, crossing waters of Lee Creek and Little Kana-
16 wha, as specified in the plat, eleven thousand three hundred and eighty-three poles to pointers; thence south forty-five degrees west three thousand nine hundred and forty-five poles to two beech trees by a branch of Little Kanawha, corner to a survey made for Thomas Mathews of two thousand acres, and with his line up said branch north sixty degrees west three hundred and sixty-two poles to a white oak, corner to said survey, and also corner to a survey of three thousand and ninety-eight acres, made for Charles Patterson and continue'g the same course with said Patterson's line five hundred and forty-six poles to two sugar-trees growing from one root, about twenty poles from a branch of Little Kanawha, crossing a branch of the same at three hundred

and twenty poles; thence south thirty degrees west nine hundred and ten poles to a beech in the forks of a branch of a left-hand fork of the head of the south fork of Pocotatico, about half a mile up said fork, being corner to said Patterson's survey; and also corner to a survey of fifty-three thousand acres made for Samuel Hollein; north thence with nine of his lines crossing waters as marked in the plat, north fifteen
17 degrees west two hundred and ninety poles to a beech and lynn in the fork of a creek, north thirty-five degrees west six hundred and thirty poles to a beech by a branch; north forty-five degrees west two hundred and sixty poles to a large poplar and chestnut oak; south forty-five degrees west three hundred and sixty poles to a white oak and poplar on the west side of a hill; south thirty-five degrees west six hundred and sixty poles to a sugar-tree and beech on a large branch run'ing northerly; south fifty-four degrees, west one thousand nine hundred and eighty poles to a lynn and sugar-tree on the bank of a small branch; south eighty degrees, west five hundred and ninety poles to a large poplar; touth fifty-five degrees, west three hundred and twenty poles to a poplar and maple on a head branch of Mill Creek; south nine degrees, east four hundred and sixty poles to the beginning; but it is always to be understood that the survey upon which this grant is founded includes two hundred and twenty-seven thousand four hundred and sixty acres, exclusive of the above quan'ty of two hundred thousand acres, all of which having a preference by law to the warrants and rights, upon which this
18 grant is founded, liberty is reserved that the same shall be firm and valid, and may be carried unto grant or grants, and this grant shall be no bar in either law or equity to the confirmation of the tittle to the same, as before mentioned and reserved with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances' to the said Samuel M. Hopkins (except as before excepted) and his heirs forever.

In witness whereof the said Robert Brooke, esquire, governor of the commonwealth of Virginia, hath hereunto set his hands and caused the lesser seal of the said commonwealth to be affixed at Richmond on the first day of July, in the year of our Lord one thousand seven hundred and ninety-six, and of the commonwealth the twentieth.

ROBERT BROOKE.

I, William P. McKellam, register of the Virginia land office, do certify that the foregoing is a true copy from the records of said office. Given under my hand and seal-office at Richmond this 28th day of Novber, A. D. 1872.

[VIRGINIA LAND OFFICE.] WILLIAM P. McKELLAM.

(Here follows plat marked page 19.)

(Indorsed:) Plat and certificate S. M. Hopkins. "B."

Ex. C.

20 *Deed—Oliver Wolcott to Samuel M. Hopkins.*

This indenture, made the twenty-second day of June, one thousand eight hundred and eight, between Oliver Wolcott of the city of New York, esquire of the first part, Mary Watson, of the same city, widow, of the second part, Samuel M. Hopkins, of the same city, counsellor at law, of the third part, and James T. Watson, of the same city, gentlemen, of the fourth part, witnesseth: Whereas by four several indentures made the eighteenth day of February, in the year one thousand eight

hundred and six, between the said Samuel M. Hopkins of the first part, James Watson, of the same city, esquire, of the second part, and the said Oliver Wolcott of the third part, the said Samuel Hopkins, by the assent of the said James Watson, did convey a release unto the said Oliver Wolcott, in fee, several tracts of land in the commonwealth of Virginia, in the said indentures more particularly described, that is to say, by one of said indentures a certain tract of land containing seventy thousand two hundred and ten acres, lying and being in the now or late county of Kanawka, on the south side of Sandy River, and between Sandy and Guyandotte Rivers and on Twelve Pole Creek and the branches thereof, which tract of land, by certain letters patent of said
21 commonwealth bearing date on or about the second day of July, in the year one thousand seven hundred and ninety-six, was granted or purported to be granted to the said Samuel M. Hopkins, as assigne' of Gordon Cloyd, and which in said letters-patent is more particularly described. And by another of said indentures a certain other tract of land now or late in the county of Montgomery, containing eighty thousand acres, on the west side of New River, and on the branches thereof, namely, Wolf Creek, East River, Island Creek, Luk Creek, and Brush Creek and the waters thereof, which last mentioned tract of land, by certain letters patent of said commonwealth, bear'ng date on or about the fourth day of July, in the year one thousand seven hundred and ninety-six, was granted to said Samuel M. Hopkins, as assignee of John Leyburn and Thomas Cloyd, and in said letters patent is more particularly described. And by another of said indentures a certain other tract of land now or late in the county of Kanawha, containing two hundred thousand acres lying southward of the Ohio River, and adjoining the line of Harrison County, which last-mentioned tract of land was, by certain letters patent of said commonwealth bear'ng date on or about the first day of
22 July, in the year one thousand seven hundred and ninety-six, granted to the said Samuel M. Hopkins, and in said letters patent is more paticularly described. And by the other of said indentures, reciting that by certain several letters patent of said commonwealth, bearing date some days in the month of July, in the year one thousand seven hundred and ninty-six, there had been granted unto the said Samuel M. Hopkins divers other tracts of land in said commonwealth, namely, one tract of fifty thousand acres in Kanawha County, on some waters of Ohio and Guyandotte Rivers, being above Guyandotte. One tract of four thousand and seventy acres on the west side of Kanawha River in Montgomery County; one other tract of eight thousand four hundred acres on some waters of Roanoke in the same county, and one other tract of eleven thousand five hundred acres in the same county. All of which tracts mentioned in said last mentioned indenture it was therein also stated, were believed to have been conveyed by said Samuel M. Hopkins, with the assent or authority of said James Watson, as is therein mentioned, but in relation to which said Samuel M. Hopkins might have some legal rights as is therein more particularly, mentioned.
23 It was thereupon witnessed that said Samuel M. Hopkins, with the assent of said James Watson, did grant, demise, quitclaim and release to the said Oliver Wolcott in feel, all his remaining right, interest, title, claim, equity, action, right of action and demand whatever in and to the several tracts of land last aforesaid, subject to certain rights of said Samuel M. Hopkins to make certian conveyances of the four last mentioned tracts as in the said last mentioned indenture is stated; and whereas by a certain deed roll, bearing date the

nineteenth day of February, in the year one thousand eight hundred and six, the said Oliver Wolcott, declared all the lands and premises therein and thereby conveyed to be in trust for the sole and proper benefit and behoof of the said James Watson, his heirs and assigns, but subject to a certain declaration of trust made by a certain indenture bearing date the eighteenth day of February in the year one thousand eight hundred and six, between the said James Watson, Oliver Wolcott and Samuel M. Hopkins, to indemnify the said Samuel M. Hopkins in the manner therein mentioned; and whereas the said James Watson is since, deceased leaving the said James T. Watson, his only son and child and the person principally interested in the estate; and the
24 parties to these presents are willing that the land and premises aforesaid should be conveyed to said James T. Watson in fee simple, absolute, and discharged of all trusts, to the end that he may be able to make absolute conveyances thereof, for which purpose the said Mary Watson, being the widow of James Watson, and interested in his estate, hath joined in these presents:

Now, therefore, this indenture witnesseth that the said Oliver Wolcott, in consideration of the premises and five dollars paid him by the said James T. Watson, the receipt of which is hereby acknowledged, and by and with the consent of said Mary Watson and Samuel M. Hopkins, hath granted, bargained, sold, released, and conveyed, and doth hereby grant, bargain, sell, release, and convey unto the said James T. Watson and his heirs and assigns, forever, all the several tracts of land and premises hereinbefore mentioned or described or intended so to be, and all the estate, right, interest, title, trust, claim, or demand of the said Oliver Wolcott of, in, or to the same, together with all the rights, members, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and the said Samuel
25 M. Hopkins and Mary Watson severally, in consideration of fifty cents to each of them paid by said James T. Watson, have remised, released, and forever quitclaimed unto him, his heirs and assigns, all trusts, equities, interests, residuary share, claim, and demand which they, or either of them, have in or to the land and premises aforesaid, excepting only that with regard to the four tracts of land mentioned in the indenture herein lastly before in part recited, the said Samuel M. Hopkins reserves the right to make such conveyance of these four tracts of land as by any contract or obligation he may be liable to make, in such manner as in the said hereinbefore in part recited indenture is more particularly mentioned; and this indenture is to be taken and deemed subject to such exceptions: to have and to hold the premises, to the said James T. Watson, his heirs and assigns, for his and their own use.

And the said Oliver Wolcott, for himself and his heirs, doth covenant with said James T. Watson, his heirs or assigns, that he hath not knowingly or wilfully done any act, deed, matter, or thing whereby the title to the before granted released premises is or may be in any manner conveyed away, impeached, or incumbered.

26 In witness whereof the parties to these presents have hereunto set their hands and seals the day and year first above written.

OLIVER WOLCOTT. [SEAL.]
MARY WATSON. [SEAL.]
SAM'L M. HOPKINS. [SEAL.]
JAMES T. WATSON. [SEAL.]

Sealed & delivered in presence of—

A small erasure in 27 line of 1st page, word "certain" interlined, and word "some" partly altered in 2d page, words "of land" interlined in the third page, and the habendum in 4th page, 2d line, in words following, to wit, "to have and to hold the premises to the said James T. Watson, his heirs and assigns, for his and their own use."

L. RYMER, witness to signature of S. M. Hopkins & Oliver Wolcott.
WM. G. BUELL, witness to signature of Mary Watson only.
SAMUEL ROGERS, witness to signatures of all the parties.
Witnesses to the execution by S. M. Hopkins:
A. ROGERS,
S. ROGERS, &
ROB'T WALKER.

DISTRICT OF NEW YORK, *ss:*

On the 15th day of July, 1813, before me, Burkholst Livingston, an associate justice of the Supreme Court of the United States, came Samuel Rogers, a subscribing witness to the execution of the within deed, who, being duly sworn, said that he saw all of the grantors within named execute the said deed; that he set his own name as a wit-
27 ness to such execution. I do, therefore, allow it to be recorded.
B. LIVINGSTON.

Witnesses to the signature of Mary Watson:
ARCH. ROGERS.
ROB'T WALKER, &
HENRY CONGER, JR.

CITY OF NEW YORK, *ss:*

By Dewitt Clinton, mayor of the city of New York: It is hereby certified that on the 6th day of April, A. D. 1814, personally appeared before me, the said mayor, Samuel Rogers, who, being by me duly sworn, did depose and say that he saw Oliver Wolcott, Mary Watson, and Samuel M. Hopkins execute the annexed instrument as their voluntary act and deed, for the purposes therein mentioned; and on the 20th day of April, 1814, personally appeared Robert Walker, who, being by me duly sworn, did depose and say that he saw Mary Watson and Samuel M. Hopkins execute the said instrument as their voluntary act and deed, for the purposes therein mentioned; and on the twentieth day of April aforesaid appeared Henry Conger, jr., who, being duly sworn, did say that he saw Mary Watson execute said instrument as her own voluntary act and deed, for the purposes mentioned therein; and on the 24th day of May, A. D. 1814, personally appeared before m' L. Regail, who, being by me duly sworn, did depose and say that he
28 saw Samuel M. Hopkins execute the said instrument as his voluntary act and deed, for the purposes therein mentioned, and that he signed his name as a witness thereto; and on the 6th day of June, 1814, appeared before me Oliver Wolcott, and acknowledged that he executed the annexed deed as his voluntary act, for the uses and purposes therein mentioned.

In witness whereof I have hereunto subscribed my name and caused the seal of mayoralty to be affixed, this 6th day of June, 1814.

(CITY OF NEW YORK,)
(MAYORALTY SEAL.) DEWITT CLINTON.

At a court held for Cabell County, on the 2d day of August, 1814, an indenture between Oliver Wolcott, of the first part, Mary Watson, of the second part, Samuel M. Hopkins, of the third part, and James

T. Watson, the fourth part, was this day presented in court; and, it appearing to the court, from the certificate of Dewitt Clinton, mayor of the city of New York, that the said indenture has been regularly proved and acknowledged before the said mayor, the same is admitted & ordered to be recorded.

A copy. Teste:

EDMUND MORRIS, *Clk.*

VIRGINIA, *to wit:*

At Giles August court, 1827. This deed from Oliver Wolcott, Mary Watson, and Samuel M. Hopkins to James T. Watson, which has been acknowledged and proven before Dewitt Clinton, mayor of the
29 city of New York, was presented in *in* court and ordered to be recorded.

Teste: DAVID FRENCH, *Clk.*

Wood County court, September term, 1827.

The foregoing indenture between Oliver Wolcott, of the first part, Mary Watson, of the second part, Samuel M. Hopkins, of the third part, and James T. Watson, of the fourth part, was presented in open court, and, together with the several certificates of authentication and all things relating thereto, on motion of James T. Watson, one of the parties thereto, ordered to be recorded.

Teste: J. H. NEAL, *C. W. C.*

EX. D.

This deed, made this 11th day of January, 1854, between the heirs of James T. Watson, deceased, of the first part, by James H. Brown, commissioner, and Peter Clark, of New York, of the second part, witnesseth: That, whereas the commonwealth of Virginia, by patent bearing date on the 1st day of July, 1796, granted to Samuel M. Hopkins a tract of land containing two hundred thousand acres, lying chiefly in the present county of Jackson; and whereas the said Samuel M. Hopkins, together with Oliver Wolcott and Mary Watson, by deed of bargain and sale and release, bearing date on the 22d day of June, 1808, & duly recorded in the clerk's offices of the county courts
30 Cabell & Mason & Wood counties, conveyed the said tract of land to James T. Watson, since deceased.

And whereas, by the decree of the circuit courts of Wayne & Jackson counties rendered in pursuance of an act of the general assembly of Virginia, passed February 21st, 1845, entitled, "An act for the relief of the heirs of James T. Watson, deceased, and others, the said James H. Brown was appointed a commissioner, among other things to sell and convey the lands of the said James T. Watson dec'd, lying in the counties of Cabell, Wayne, and Jackson, and carry out, execute, and complete all sales, contracts, leases, and agreements made by the said James T. Watson, or by any of his agents in his lifetime, with divers persons in relation to parcels of said tract of land, and collect the proceeds thereof; to all which, for greater accuracy, reference is ere made: Now, therefore, in consideration of the premises, and for and in consideration of three thousand and ninety dollars, deposited to the credit of the said James H. Brown, commissioner, in the Butcher's & Drover's Bank, New York, by the said party of the second part, before the delivery of these presents, the said parties of the first part

do grant, bargain and sell, and release unto the said party of the second part, and his heirs forever, but without warranty, and at the
31 sole risk and hazard of the said party of the second part, all the rest and residue of the aforesaid tract yet undisposed of, and not in anywise embraced in, nor affected by any of the sales, contracts, leases, or agreements in writing, made as aforesaid by the said Watson or his agents in his lifetime, or by the said commissioner. As to all which said sales, contracts, leases, and agreements, the parcels of land therein embraced, this deed is to be wholly inoperative, and the powers, rights, duties, and remainders in relation thereto, of the said parties of the first part, and of the said commissioner, remain the same as if this deed had never been made, and the said tract of two hundred thousand acres (except'g as before excepted), is bounded as follows, to wit: Beginning at a beech tree on the bank of a left-hand fork of Pocotatico, which runs there nearly S. 20 W., the same being corner to a survey of 53,000 acres, made for Samuel Hollingsworth, & thence running N. 45 W. 4,490 poles to a sugar-tree on the bank of a rivule*a* running northeast, crossing the head branches of Mill Creek & 18-Mile Creek as marked in the plat of the original survey; thence north crossing waters of Mill Creek, 674 poles to a poplar tree marked S. M. H., standing on the north side of a branch of Mill Creek, running north-
32 easterly close to the water; thence N. 45 E. 840 poles crossing several branches, also crossing Mill Creek, to a black oak two small white oaks and a gum on the east bank of the creek, about 80 poles above the rapids; the black oak marked S M H.; thence north 16 W. 109 poles, crossing the creek twice, to a Spanish oak on the bank of the creek below the rapids, marked on two sides as a corner, and also marked "S M H" with a hatchet; thence down the creek by the meanders thereof and binding thereon 1,179 poles to the mouth of the creek on the upper side; thence up the Ohio river by the different meanders thereof and binding thereon, crossing several creek' specified in said plat 10,126 poles to an elm, two sugar-trees, and a beech on the bank of the Ohio river, corner to the counties of Kanawha and Harrison, as they were in 1795 when this survey was made; thence with the dividing line between said counties S. 5 E. crossing waters of Lee Creek and Little Kanawha 11,383 poles to pointers; thence S. 55 W. 3,945 poles to 2 beech trees by a branch *by a branch* of Little Kanawha, corner to a survey made for Thomas Mathews of 2,000 acres and with the line of said branch N. 60 W. 360 poles to a white oak,
Corner to said survey, and also corner to a survey of 3,098 acres
33 made for Chas Pattersen and continuing the same course with said Pattersen's line 546 poles to two sugar trees growing from one root about 20 poles from a branch of Little Kanawha crossing a branch of the same at 320 poles; thence S. 20 W. 910 poles to a beech in the forks of a branch of a left-hand fork of the head of south fork of Pocotico, about half a mile up said fork being a corner to said Pattersen's survey and also a corner to a survey of 53,000 acres made for Samuel Hollingsworth; thence with one of his line N. 15 W. 290 poles, to a beech and linn in the forks of a creek N. 35 W. 636 poles to a beech by a branch, N. 45 W. 260 poles to a large poplar and chestnut-oak; S. 45 W. 360 poles to a white-oak and poplar on the west side of a hill; S. 45 W. 660 poles to a sugar-tree and beech on a large branch running northerly S. 54 W. 2980 poles to a line & sugar-tree on the *on the* bank of a small branch S. 80 W. 590 poles to a large poplar S. 55 W. 320 poles to a poplar and maple on a head branch of Mill Creek; S. 9 E. 460 poles to the beginning containing acres

this being a sale in gross and not by the acre of the said residue of the tract of land aforesaid, for the gross sum of $3,900.00 as aforesaid and without recourse.

34 In testimony whereof the said parties have hereunto set their hands and seals the day and year above written.

JAMES T. WATSON, *heirs.* [SEAL.]
By JAMES H. CROWN, *Com'r.*

COUNTY OF KANAWHA, *to wit:*

I, John A. Truslow, a justice of the peace in and for the county aforesaid in the State of Virginia do certify that James H. Brown, com'r for the heirs of James T. Watson, dec'd, whose name is signed to the writing above, bea'ng date on the 11th day of January, 1854, has acknowledged the same before me in my county aforesaid.

Given under my hand this 21st day of January, 1854.

JNO. A. TRUSLOW, *J. P.*

VIRGINIA:

JACKSON COUNTY, CLERK'S OFFICE, *April* 26, 1858.

This day the foregoing deed was received in said office and together with the certificate thereto annexed was duly admitted to record in said office.

Teste:

JAMES GREER, *Clk.*

A copy.
Teste:

J. L. ARMSTRONG, *Clk.*

EX. E.

Deed—Peter Clark & wife to Wm. D. Campbell.

35 This indenture made the 29th day of March, 1854, between Peter Clark of the city of Brooklyn, Kings County, and State of New York, & Emeline A., his wife, parties of the first part, and William W. Campbell, of the city and county of New York, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the sum of eight thousand dollars to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said party of the second part, his heirs and assigns forever, all and singular that tract, piece, or parcel of lands lying and being the counties of Wood, Jackson, Wirt, and Mason in the State of Virginia, being the same premises granted and conveyed to the said Peter Clark by James H. Brown, commissioner, by deed dated January the eleventh, one thousand eight hundred and fifty-four, to which, and the recitals therein contained, reference is hereby made, which said premises are all the unsold portions of the land patented to Samuel M. Hopkins by letters patent dated the first day of July, one thousand seven hundred and ninety-six, the said original patent granting two hundred thousand acres, and the survey upon

36 said patent was founded being described as follows: Beginning at a beech tree on the bank of the left-hand fork of Pocotalico, which runs there nearly south twenty degrees west, the same being a corner to a survey of fifty-three thousand acres made for Samuel Hollingsworth, and thence nearly north forty-five degrees west four thousand four hundred and ninety poles to a sugar-tree on the bank of a

rivulet running northeast, crossing the head of Mill Creek and Eighteen-Mile Creek, as marked in the plat of the original survey; thence north, crossing waters of Mill Creek, six hundred and seventy-four poles to a poplar tree, marked S. M. H., standing on the north of a branch of Mill Creek, running northeasterly close to the water; thence north forty-five degrees east five hundred and forty poles, crossing Mill Creek, to a black oak, two small white oaks, and a gum on the east bank of the creek about eighty poles above rapids, the black oak marked S. M. H. with a hatchet; thence down the creek by the different meanders thereof, and binding thereon one thousand one hundred and seventy-nine poles to the mouth of the creek on the upper side; thence up the Ohio River by the different meanders thereof binding thereon, crossing several
37 creeks as specified in said plat, ten thousand one hundred and twenty-six poles to an elm, two sugar-trees, and a beech on the bank of the Ohio, and corner to the counties of Harrison and Kanawha, as they were in one thousand seven hundred and ninety-five, when this survey was made, with the dividing line between said counties; south fifty-five degrees east, crossing waters of Lee Creek and Little Kanawha eleven thousand three hundred and eighty-three poles to pointers; thence south forty-five degrees west three thousand nine hundred and fifty-four poles to two beech trees by a branch of Little Kanawha, corner to a survey made for Thomas Mathews of two thousand acres, and with this line on said branch north sixty degrees west three hundred and sixty poles to a white oak, corner to said survey, and also corner to a survey of three thousand and ninety-eight acres made for Chas. Patterson, and continuing the same course with said Patterson's line, five hundred and forty-six poles to two sugar-trees, growing from one root, about twenty poles from a branch of Little Kanawha, crossing a branch of the same at three hundred and twenty poles;
38 thence south twenty degrees west nine hundred and ten poles to a beech in the forks of branch of a left-hand fork of the head of the south fork of Pocotalico, about a half a mile up said fork, being corner to said Patterson's survey, and also to a survey of fifty-three thousand acres made for Samuel Hollingsworth; thence with nine of his lines north fifteen degrees west two hundred and ninety poles to a beech & lynn in the forks of a creek; north twenty-five degrees west two hundred and sixty poles to a large poplar and chestnut oak; south thirty-five degrees west six hundred and sixty poles to a sugar-tree and beech on a large branch run'ing northerly; south fifty-four degrees west one thousand nine hundred and eighty poles to a lynn and sugar-tree on the bank of a small branch; south eighty degrees west five hundred and ninety poles to a large poplar; south fifty-five degrees west three hundred and twenty poles to a poplar and maple, on a head branch of Mill Creek; south nine degrees east four hundred and sixty poles to the beginning; containing one hundred thousand acres, more or less, this being a sale in gross, and not by the acre, of the said residue of the tract of land aforesaid: To have and
39 to hold the said premises hereby granted unto the said party of the second part, his heirs and assigns forever. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first aforesaid.

PETER CLARK. [SEAL.]
EMELINE CLARK. [SEAL.]

Sealed and delivered in presence of—
MARY E. CLARK and
C. H. THOMSON.

STATE OF NEW YORK,
County of Kings, City of Brooklyn, ss:

I, Charles H. Thompson, a commissioner appointed by the governor of the State of Virginia for the said State of New York, certify that Peter Clark and Emeline A., his wife, personally known to me, and whose names are signed to the foregoing instrument, bear'ng date on the twenty-ninth day of March, 1854, have severally acknowledged the same before me in my State'aforesaid. And the said Emeline A. Clark being examined by me privily and apart from her husband, and having the said instrument fully explained to her, acknowledged the same to be her act, and declared that she had willingly executed the same and does not wish to retract it.

Given under my hand and seal of office the 8th day of April, 1854.

40 CHAS. THOMPSON, BROOKLYN, NEW YORK, COM'R. CHARLES THOMPSON, *Commissioner for the State of Virginia.*

VIRGINIA, *ss:*

JACKSON COUNTY CLERK'S OFFICE, 23 *August*, 1855.

This day the foregoing deed, with the certificate thereto annexed, was received in said office and duly admitted to record therein.

Teste: DANIEL W. GREER, *D'r for* JAMES GREER, *Clerk.*

RECORDER'S OFFICE OF JACKSON COUNTY, WEST VIRGINIA, *July* 26, 1867.

The foregoing deed from Peter Clark and wife, to Wm. W. Campbell is a true copy from the records of said office.

Teste: JOHN ARMSTRONG, *Recorder.*

Fees, $1.50.

EX. F.

To all whom these presents shall come, greeting:

Know ye that we, William W. Campbell and Catherine A. L., his wife, of Cherry Valley, New York, for and in consideration of the sum of one dollar, lawful money of the United States of America, to them in hand paid by Willard Parker, of the city of New York, at or before the ensealing and delivery of these presents, the receipt where-
41 of is hereby acknowledged, have remised, released, and *and* forever quitclaim', and by these presents do remise, release, and forever quitclaim unto the said Willard Parker, and to his heirs and assigns forever, all my right, title, interest, and estate in and to all the lands situate in Western Virginia which were included in the exterior line or boundaries of a patent granted by the commonwealth of Virginia to Samuel M. Hopkins, bear'ng date the 1st day of July, 1796, including four hundred and twenty-seven thousand four hundred and sixty acres, then lying in the county of Kanawha, and now mostly in the county of Jackson, in the State of Virginia, for a more particular description and the bounds thereof refer*a*nce is made to said patent, which is duly recorded in the land-office in the city of Richmond, in the offices of the clerks of the county courts of Kanawha and Wood counties, State of Virginia: To have and to hold the said released premises unto the said Willard Parker, his heirs and assigns, to his

STATE OF NEW YORK,
City and County of New York, ss:

I, William A. Bowers, a notary public of the State of New York, duly commissioned and sworn, and dwelling in said city and county, do hereby certify that Mary A. Parker, the wife of Willard Parker, whose name is signed to the writing above, bearing date November 2d, A. D. 1872, personally appeared before me in the county aforesaid, and being examined by me privily and apart from her husband, and having the said writing explained to her, she, the said Mary A. Parker, acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract.

Given under my hand and official notarial seal this eleventh day of November, A. D. 1872.

OFFICIAL SEAL W. H. BOWERS. WILLIAM H. BOWERS,
Notary Public, State of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles Loew, clerk of the city and county of New York, and also clerk of the supreme court of the said city and county of New York, the same being a court of record, do hereby certify that Wm. H. Bowers, whose name is subscribed to the certificate of the proof of acknowledgement of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgement, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same, and further that I am well acquainted with the handwriting of such notary, and verily believe that the signature is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of November, 1872.

OFFICIAL SEAL. CHAS. E. LOEW, *Clk.*

18 STATE OF WEST VIRGINIA,
Jackson County Court Clerk's Office:

APRIL 15th, 1873.

The foregoing deed from Willard Parker & wife to Willard Parker, jr., bearing date 2d of November, 1872, with the certificate thereto appended, was this day received in said office, and admitted to record therein.

J. L. ARMSTRONG, *Clk.*

A copy,
Teste: J. L. ARMSTRONG, *Clk.*

EX. H.

This deed, made this 4th day of January, 1865, between Granville Parker, of Brook, West Virginia, special commissioner, party of the first part, and Willard Parker of the city of New York, party of the second part, witnesseth: That whereas by a decree of the circuit court for the county of Cabell, West Virginia, made at its last September term, in a suit in chancery then pending, in which Willard Parker is complainant and Peter Clark and others were defts, the party of the first part was appointed a special commissioner to sell and convey at public auction the legal and equitable interest of the said Peter

STATE OF NEW YORK,
City and County of New York, ss:

I, William A. Bowers, a notary public of the State of New York, duly commissioned and sworn, and dwelling in said city and county, do hereby certify that Mary A. Parker, the of Willard Parker, whose names are signed to the writing above, bearing date November 2d, A. D. 1872, personally appeared before me in the county atoresaid, and being examined by me privily and apart from her husband, and having the said writing explained to her, she, the said Mary A. Parker,
47 acknowledged the said writing to be her act, and declared that she had willingly executed the same, and does not wish to retract.

Given under my hand and official notarial seal this eleventh day of November, A. D. 1872.

[OFFICIAL SEAL W. H. BOWERS.] WILLIAM H. BOWERS,
Notary Public, State of New York.

STATE OF NEW YORK,
City and County of New York, ss:

I, Charles Loew, clerk of the city and county of New York, and also clerk of the supreme court of the said city and county of New York, the same being a court of record, do hereby certify that Wm. H. Bowers, whose name is subscribed to the certificate of the proof of acknowledgement of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgement, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn, and duly authorized to take the same, and further that I am well acquainted with the handwriting of such notary, and verily believe that the signature is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 12th day of November, 1872.

[OFFICIAL SEAL.] CHAS. E. LOEW, *Clk.*

48 STATE OF WEST VIRGINIA,
Jackson County Court Clerk's Office:

APRIL 15th, 1873.

The foregoing deed from Willard Parker & wife to Willard Parker, jr., bearing date 2d of November, 1872, with the certificate thereto appended, was this day received in said office, and admitted to record therein.

J. L. ARMSTRONG, *Clk.*

A copy.
Teste: J. L. ARMSTRONG, *Clk.*

EX. H.

This deed, made this 4th day of January, 1865, between Granville Parker, of Brook, West Virginia, special commissioner, party of the first part, and Willard Parker of the city of New York, party of the second part, witnesseth: That whereas by a decree of the circuit court for the county of Cabell, West Virginia, made at its last September term, in a suit in chancery then pending, in which Willard Parker is complainant and Peter Clark and others were def'ts, the party of the first part was appointed a special commissioner to sell and convey at public auction the legal and equitable interest of the said Peter

Clark, described in the complainant's bill and exhibits filed in the cause. And whereas, on the 9th day of December last past, the
49 complainant, Willard Parker, became the purchaser at public auction, he being the highest bidder, of said Peter Clark's legal and equitable interest in the following described premises for the sum of fifty dollars; and upon my report thereof, this 4th day of January, 1865, it is ordered that I make, execute, and acknowledge, and deliver to the party of the second part, a good and sufficient deed conveying and assuring the same to the party of the second part, his heirs and assigns forever: Now, therefore, in consideration of the premises and of the fifty dollars, the party of the first part doth grant and convey to the party of the second part, all the legal and equitable interest which the said Peter Clark had and assigned by mortgage assignments of prior or subsequent date, and filed as exhibits in the case, in the large body of lands known as said Clark's Jackson County estate (the quantity of land being undetermined), & lying in Jackson and adjoi'ng counties in West Virginia; for a more particular description of the interest intended to be conveyed, refer*a*nce is made to the deed of James H. Brown, special commissioner, to said Peter Clark, dated the 11th day of
50 January, 1854, and recorded in the recorder's office of said Jackson County, in deed book 12, page 308, to exhibits filed in said cause: to have and to hold the same to the party of the second part, his heirs and assigns, forever.

Witness the following signature and seal.

GRANVILL PARKER, *Sp'l Com'r.* [SEAL.]

WEST VIRGINIA,

Cabell County, Guyandotte Township:

I, Enoch M. Underwood, a justice of the peace for said township, do certify that Granville Parker, sp'l commissioner, whose name is signed to the above writing, bear'ng date on the 4th day of January, 1865, has acknowledged the same before me in my said township.

Given under my hand this 4th day of January, 1865.

E. M. UNDERWOOD, *Justice.*

RECORDER'S OFFICE,

Jackson County, West Virginia, Feb'y 4, 1865.

The foregoing deed from Granville Parker, sp'l com'r, to Willard Paker, with the certificate of acknowledgement thereto annexed, was this day duly admitted to record in said office.

Teste: JOHN ARMSTRONG, *Recorder.*

A copy. Tested:

J. L. ARMSTRONG, *Clk.*

(Indorsed:) Copies of Ex. C, D, E, F, G, H.

51 And at another day, to wit, at a circuit court continued and held for the county of Jackson, at the court-house thereof on the 20th day of September, 1873, the following order was made:

WILLARD PARKER, JR.,
vs.
LOT M. MORRILL & WILLARD PARKER. } In chancery.

The defendant Lot M. Morrill, by G. D. Camden, his attorney, demurs generally to the complainant's bill, also files a special demurrer

to said bill, and also files his separate answer to the same, and the said defendant Morrill requires security for costs of the plaintiff.

The following is a copy of the special demurrer filed by defendant Lot M. Morrill to pl't'f's bill:

To the honorable Joseph Smith, judge of the circuit court of Jackson County:

The demurrer of Lot M. Morrill to the bill of complaint of Willard Parker, jr., against Willard Parker and the said Lot M. Morrill, in the said cause.

52 The said defendant Lot M. Morrill, by protestation not confessing or acknowledging all or any of the matters or things in complainant's said bill of complaint to be true in such said man'er and form as the same are therein set forth and alle*d*ged, for answer to the said complainant's bill of complaint, the said defendant Lot M. Morrill doth demur in law, and for cause of demurrer says, that it appears of the plaintiff's own showing in said bill, that the matters and things therein alle*d*ged and compla'ned of do not make a case for the interposition of a court of equity, and which the said court can grant the plaintiff any relief; and it also appears, if the said complainant is entitled to any relief or redress for the matters and things set out in said bill, that his remedy is in a court of law and not in a court of equity; wherefore and forasmuch as the complainant's said bill of complaint doth not contain, as this defendant is advised, any matter of equity, sufficient to establish any right or demand against the defendant, nor to draw him in suit into this honorable court on the equity side thereof, touching the matters complained of in said bill, and also for
53 ma'y other errors and imperfections in the said bill contained, this defendant doth demur in law thereunto, and craves the judgement of this honorable court whether he ought to make any answer to the said bill of complaint, and prays to be herein dismissed with his costs in this behalf wrongfully sustained.

The following is a copy of the answer of Lot M. Morrill, defendant, to plaintiff's bill, filed in said cause:

To the Hon. Joseph Smith, judge of the circuit court for the county of Jackson:

The separate answer of Lot M. Morrill to a bill exhibited against him by Willard Parker, jr.

The respondent, saving and reserv'g to himself all benefits of exceptions to the many errors, &c., in said bill contained, for answer saith that he is advised that the plaintiff's said bill contains no matter of equity on its face upon which this hon. court can extend to him any relief; he also is advised that if the plaintiff is entitled to any relief that he has an adequate remedy at law for these and other
54 defects and want of equity upon the face of the bill. He asks to have the same advantages as he would have upon a demurrer to said bill. Respond*e*nt, further answering, saith that he knows nothing of the plat and survey marked A, nor of the patent marked B, and the several deeds made exhibits by the said bill, nor of the land mentioned therein, and the alleged sale thereof, nor of its location and situation, and requires full and ample proof thereof. He also *claims*

that the complainant, or those under whom he claims, or any of them, either themselves or tenants, had the possession of the land they claim as alledged in his said bill; he also denies the entery of said land on the commissioner's books, and the payment of the taxes thereon or any part thereof as stated in his said bill. He also denies that the complainants, or any of those under whom he claims ever was entitled by law to take the benefit of the land forfeited to the State within the bounds of said patent, if located and established as claimed by plaintiff. Respondent admits that he is a non-resident of the State of West Virginia, and is a resident of the State of Maine; he also
55 admits that he claims, but not fraudulently, and is the owner of a portion of the land within the exterior bounds of the Hopkins patent, under which the plaintiff and the defendant, Parker, claims. Such claims respondant is under various patents issued to Albert Gallatin, Savery De Vácoulen, some of them jointly but most of them seperately, and bearing date several years anterior to the date of the entry and survey & patent of the said Hopkins, but he denies that any portion of the land claimed by respondent lies within or is covered by the said Hopkins patent, but the terms of the entry, survey, and patent is as effectually excluded therefrom as if the lands lay without the exterior bounds of said entry, survey, and patent.

The lands claimed by respondent within the exterior bounds of the Hopkins patent, as claimed by the plaintiff, and those under whom he claims, are held under thirty-one several patents granted by the commonwealth of Virginia in the year 1786 to Albert Gallatin and Savey De Valcolen and to said Albert Galatin alone and to Savey De Valcolen alone, and to Benjamin Say, and conta'n' between fifty and sixty thousand acres, among other tracts, were, on the 7th day of May,
56 1794, conveyed by Albert Gal'atin and Hannah, his wife, Savery De Valcolen, alias John Savey, to the Hon. Robert Morris, and on the 5th day of March, 1795, by the said Robert Morris, John Nicholson, James Greenleaf, conveyed to Thomas Welling, John Nixon, and John Barclay, and on the 17 day of June, in the year of our Lord 1845, were conveyed by Clement C. Biddle and others to James Dundass and Benjamin Rugler, and were on the 1st day of December, 1854, conveyed by the said Dundass and Rugler to respondent, copies of which said several patents and deeds of conveyances will be filed as part of this answer, if deemed advisable by respondant or required by the court. Respondant admits that the lands claimed by him as aforesaid within the exterior bounds of the Hopkins patent, as claimed by plaintiff, were forfeited to the commonwealth of Virginia on the 1st day November, 1836, for the failure of the owners thereof to enter them upon the books of the commissioners of the revenue of the counties in which they lay and pay the taxes due thereon. But respondant denies that the title of the land thus forfeited to any vested in the commonwealth of Vir-
57 ginia at that or at any time thereafter vested in the parties or any of them under whom the plaintiff claims by virtue of the said Hopkins patent, for in fact, if the taxes had been paid upon the land the patent did cover the lands so claimed by respondant, or any part of them, although they me be within the exterior boundary thereof. Respondant further answeri'g, saith *saith* that the tittle to the lands claimed by him as aforesaid, remained vested in the commonwealth of Virginia until the 12 day of February, 1844; then the legislature of said State passed an act authorizing James Dundass & Benjamin Rugler to pay the taxes thereon, and to become invested with the right of the said commonwealth thereto; that on the 8th day of May, 1845, the

to said bill, and also files his separate answer to the same, and the said defendant Morrill requires security for costs of the plaintiff.

The following is a copy of the special demurrer filed by defendant Lot M. Morrill to pl't'f's bill:

To the honorable Joseph Smith, judge of the circuit court of Jackson County:

The demurrer of Lot M. Morrill to the bill of complaint of Willard Parker, jr., against Willard Parker and the said Lot M. Morrill, in the said cause.

52 The said defendant Lot M. Morrill, by protestation not confessing or acknowledging all or any of the matters or things in complainant's said bill of complaint to be true in such said man'er and form as the same are therein set forth and alle*d*ged, for answer to the said complainant's bill of complaint, the said defendant Lot M. Morrill doth demur in law, and for cause of demurrer says, that it appears of the plaintiff's own showing in said bill, that the matters and things therein alle*d*ged and complained of do not make a case for the interposition of a court of equity, and which the said court can grant the plaintiff any relief; and it also appears, if the said complainant is entitled to any relief or redress for the matters and things set out in said bill, that his remedy is in a court of law and not in a court of equity; wherefore and forasmuch as the complainant's said bill of complaint doth not contain, as this defendant is advised, any matter of equity, sufficient to establish any right or demand against the defendant, nor to draw him in suit into this honorable court on the equity side thereof, touching the matters complained of in said bill, and also for
53 ma'y other errors and imperfections in the said bill contained, this defendant doth demur in law thereunto, and craves the judgement of this honorable court whether he ought to make any answer to the said bill of complaint, and prays to be herein dismissed with his costs in this behalf wrongfully sustained.

The following is a copy of the answer of Lot M. Morrill, defendant, to plaintiff's bill, filed in said cause:

To the Hon. Joseph Smith, judge of the circuit court for the county of Jackson:

The separate answer of Lot M. Morrill to a bill exhibited against him by Willard Parker, jr.

The respondent, saving and reservi'g to himself all benefits of exceptions to the many errors, &c., in said bill contained, for answer saith that he is advised that the plaintiff's said bill contains no matter of equity on its face upon which this hon. court can extend to him any relief; he also is advised that if the plaintiff is entitled to any relief that he has an adequate remedy at law for these and other
54 defects and want of equity upon the face of the bill. He asks to have the same advantages as he would have upon a demurrer to said bill. Respond*ent*, further answering, saith that he knows nothing of the plat and survey marked A, nor of the patent marked B, and the several deeds made exhibits by the said bill, nor of the land mentioned therein, and the alleged sale thereof, nor of its location and situation, and requires full and ample proof thereof. He also *claims*

that the complainant, or those under whom he claims, or any of them, either themselves or tenants, had the possession of the land they claim as alledged in his said bill; he also denies the entery of said land on the commissioner's books, and the payment of the taxes thereon or any part thereof as stated in his said bill. He also denies that the complainants, or any of those under whom he claims ever was entitled by law to take the benefit of the land forfeited to the State within the bounds of said patent, if located and established as claimed by plaintiff. Respondent admits that he is a non-resident of the State of West Virginia, and is a resident of the State of Maine; he also
55 adm.ts that he claims, but not fraudulently, and is the owner of a portion of the land within the exterior bounds of the Hopkins patent, under which the plaintiff and the defendant, Parker, claims. Such claims respondant is under various patents issued to Albert Gallatin, Savery De Vacoulen, some of them jointly but most of them seperately, and bearing date several years anterior to the date of the entry and survey & patent of the said Hopkins, but he denies that any portion of the land claimed by respondent lies within or is covered by the said Hopkins patent, but the terms of the entry, survey, and patent is as effectually excluded therefrom as if the lands lay without the exterior bounds of said entry, survey, and patent.

The lands claimed by respondent within the exterior bounds of the Hopkins patent, as claimed by the plaintiff, and those under whom he claims, are held under thirty-one several patents granted by the commonwealth of Virginia in the year 1786 to Albert Gallatin and Savey De Valcolen and to said Albert Galatin alone and to Savey De Valcolen alone, and to Benjamin Say, and conta'n' between fifty and sixty thousand acres, among other tracts, were, on the 7th day of May,
56 1794, conveyed by Albert Gal'atin and Hannah, his wife, Savery De Valcolen, alias John Savey, to the Hon. Robert Morris, and on the 5th day of March, 1795, by the said Robert Morris, John Nicholson, James Greenleaf, conveyed to Thomas Welling, John Nixon, and John Barclay, and on the 17 day of June, in the year of our Lord 1845, were conveyed by Clement C. Biddle and others to James Dundass and Benjamin Rugler, and were on the 1st day of December, 1854, conveyed by the said Dundass and Rugler to respondent, copies of which said several patents and deeds of conveyances will be filed as part of this answer, if deemed advisable by respondant or required by the court. Respondant admits that the lands claimed by him as aforesaid within the exterior bounds of the Hopkins patent, as claimed by plaintiff, were forfeited to the commonwealth of Virginia on the 1st day November, 1836, for the failure of the owners thereof to enter them upon the books of the commissioners of the revenue of the counties in which they lay and pay the taxes due thereon. But respon.dant denies that the title of the land thus forfeited to any vested in the commonwealth of Vir-
57 ginia at that or at any time thereafter vested in the parties or any of them under whom the plaintiff claims by virtue of the said Hopkins patent, for in fact, if the taxes had been paid upon the land the patent did cover the lands so claimed by respondant', or any part of them, although they mg be within the exterior boundary thereof. Respondant further answeri'g, saith *saith* that the tittle to the lands claimed by him as aforesaid, remained vested in the commonwealth of Virginia until the 12 day of February, 1844; then the legislature of said State passed an act authorizing James Dundass & Benjamin Rugler to pay the taxes thereon, and to become invested with the right of the said commonwealth thereto; that on the 8th day of May, 1845, the

said Dundass & Rugler in pursuance of said act did pay said taxes and thereby became invested with the title of the said commonwealth to said land; that the taxes since that time has been paid, and respondant has a perfect tittle thereto. Respondant denies all the allegation' of said bill not admitted by him; and having answered said bill prays to be hence dismissed with his costs.

G. D. CAMDEN,
Def't's Att'y.

58 *The amended answer of Lot M. Merrell, with the exceptions endorsed thereon.*

To the Hon. Joseph Smith, judge of the circuit court for the county of Jackson:

Your respondant Lot M. Morrill, by way of amendment to his seperate answer filed in this honorable court to the bill of Willard Parker, jr., exhibited against him and Willard Parker, sheweth that on the day of , 1857, your respondant & others instituted an action of ejectment in the district court of the United States for the district of West Virginia, against James Armstrong, Jonathan Hyre, Henry A. Muddleton, and Jessee Camey, to recover of them 1,500 acres of land situated in the county of Jackson, being the same tract of land granted by the commonwealth of Virginia to Albert Galatin on the 10th day of February, 1786, and situated within the bounds of the patent of Hopkins under which the complainant claims, which court then having jurisdiction to hear and determine the right to the said land, which said land, upon the formation of the State of West Virginia, fell within its bounds and jurisdiction, and which said suit was transferred
59 to the district court of the United States for the district of West Virginia, whereby the said last-named court had jurisdiction to hear and determine the matters in controversy; that such proceedings were thereupon had in said last-named case that, on the 29th day of April, 1869, it was considered by the said last-mentioned court that the said Lot M. Morrill recover of the said James Armstrong, Jonathan Hyre, and Jesse Camey the said 1,500 acres of land, which said judgement remains unreversed and in full force; that upon the trial of the said cause, in the said last-named court, the said def'ts James Armstrong, Jonathan Hyre, and Jessee Camey then and there, in the said last-named court, being privies of the said complainant and defendant Parker and those under whom they claim, offered in evidence the patent granted by the commonwealth of Virginia to Hopkins, bearing date the day of 179 , in the bill mentioned as a bar to the recovery of the said 1,500 acres of land granted as aforesaid to the said Albert Gallatin, on the ground that those claiming under the said Hopkins' patent took the benefit of the forfeiture of said 1,500 acres
60 of land granted as aforesaid to the said Albert Galatin, and by the judgement and consideration of the court, of the said last-named court, it was considered that the said patent to the said Hopkins was no to bar the recovery of the said 1,500 acre' of land by the said Lot M. Morrill, which said judgement of said last-mentioned court, so remaining in full force and unreversed, respondant avers is a bar to so much of the complainant's bill as asks to obtain the decree of this honorable court in this cause in any wise affecting the rights of the said Lot M. Morrill, this respondent, to said 1,500 acres by reason of the matter set up and alleged in the bill of the complainant in this cause. All of which will more fully appear by a transcript of the record and proceedings in said

court in said cause of the said Lot M. Morrill, &c., against the said James Armstrong & others, which is filed as part of this amended answer.

G. D. CAMDEN.
Attorney for Lot M. Morrill.

Exceptions endorsed on said amended answer.

61 The plaintiff excepts to the within answer for insufficiency, and as not presenting matters proper for the consideration of the court:

1st. Because it appears by the said answer that neither the plaintiff nor the defendant Willard Parker was a party to the suit mentioned in said answer.

2d. Because it is not shown by said answers that any person under whom the plaintiff and defendant Parker claims the lands in the bill mentioned was a party to said suit.

3d. Because the right and title of said plaintiff and defendant Parker to the lands in the bill mentioned were not in any way affected by the proceedings and judgement in said answer.

WILLARD PARKER, JR., *Plff.*
By Counsel.

Undertaking for costs.

WILLARD PARKER, JR.,
vs.
WILLARD PARKER AND LOT M. MORRILL. } Undertaking for costs.

62 Willard Parker, jr., non-resident of this State, having commenced a suit in chancery in the circuit court of Jackson County against Willard Parker and Lot M. Morrill, I. J. J. S. Hassler, of the said county, undertakes to pay all costs which may be awarded to the said Willard Parker and Lot M. Morrill in said suit, and all fees that are now due, or that may become due to the officers of the court.

Given under my hand this 5th day of March, 1874.

J. J. S. HASSLER. [SEAL.]

Signed, sealed, and acknowledged before me this 5th of March, 1874.
Teste:

N. S. SMITH, *Clerk.*

And at another day, to wit, on the 21st day of March, 1874, at a circuit court held for the county of Jackson, at the court-house thereof, the following order was made and entered:

WILLARD PARKER, JR.,
vs.
WILLARD PARKER & LOT M. MORRILL. } In chancery.

63 The defendant Lot M. Morrill having, at the last term of this court, filed a demurrer and answer to the plaintiff's bill, the plaintiff joins in said demurrer and replies generally to said answer, and this cause is set down for argument said demurrer. And now this day this cause came on to be heard upon the said demurrer, and was argued by counsel upon the demurrer and joinder. Upon consideration whereof the court is of opinion that the law arising upon said

demurrer is for the plaintiff. It is therefore ordered and decreed that said demurrer be, and the same is hereby, overruled, and this cause is set for hearing as to the defendant Morrill. The defendant Morrill tenders an amended answer; to the filing of which the plaintiff objects, which objections are overruled, and said answer is allowed to be filed, which is done. The plaintiff thereupon filed exceptions to said answer, and replies generally thereto, and this cause is set for hearing thereon.

And at another day, to wit, on the 21st day of July, 1875, at a circuit court continued and held for the county of Jackson, at the
64 court-house thereof, the following order was made and entered, to wit:

WILLARD PARKER, JR.,
vs.
WILLARD PARKER AND LOT M. MORRILL. } In chancery.

This day this cause came on again to be heard upon the plaintiff's bill and exhibits, the answer of the defendant Lot M. Morrill and exhibits, and the plaintiff's *application* thereto, and the amended answer of the said defendant, and the plaintiff's replication thereto, and was argued by counsel. Upon consideration and upon the motion of the plaintiff, it is ordered, adjudged, and decreed that Commissioner George B. Crow do take, state, and report to the court an account of the following matters and things, to wit:

1st. What tit*t*le the plaintiff and the defendant Willard Parker, sen., have to the lands in the bill and exhibits mentioned, with their claim of tit*t*le thereto, back to the patent issued by the commonwealth of Virginia to Samuel M. Hopkins, if such patent ever issued.

2d. Whether possession of the said tract of land was ever
65 taken by the said Hopkins, or by any one claiming under, by, or through him, mediate or im'ediately, and if , when, by whom, and how long continued.

3d. Whether the said tract of land was ever regularly charged upon the proper land-books of the State of Virginia and West Virginia, in the name of the said Hopkins and those claiming under him mediat'ly or im'edia*t*'ly with the taxes properly chargeable thereon. And whether such taxes have been paid, and if not, for what year or years are such taxes *all* in arrears and in whose name were they for such years charged or chargeable.

4th. Whether the said tract of land has ever been forfeited to the commonwealth of Virginia, or the State of West Virginia, for the nonpayment of the taxes thereon, or for the failure to enter them on the proper land-books in the name of said Hopkins or of any one claiming under him as aforesaid, and, if so, in whose name was said tract of land so forfeited.

5th. What tit*t*le, if any, has the defendant Lot M. Morrill to said tract of land or any of it, whether he claims the same medial'ly or im'ediately under a grant from the commonwealth of Virginia, and if so, what *what* grant and when and to whom it was issued.

66 6th. Whether the tract or tracts of land so claimed by said Morrill lie in whole or in part within the exterior bounds of the lands mentioned in the plaintiff's bill, and the probe*r*able quantity thereof included within said bounds.

7th. Whether the said lands so claimed by said Morrill or any part of them have ever been forfeited to the commonwealth of Virginia for

the non-payment of the taxes thereon, or for the failure to enter them upon the proper land-books, and, if so, for what year or years, and in whose names were they forfeited.

8th. Whether the lands so claimed by said Morrill, or any part of them have ever been forfeited to the State of West Virginia for the non-payment of the taxes thereon, or for the failure to enter them on the proper land-books; and, if so, for what year or years, and in whose name were they forfeited.

9. Whether the said lands so claimed by the said Morrill or any part of them, if forfeited as aforesaid, were ever redeemed or attempted to be redeemed from such forfeiture either to the commonwealth of Virginia or to the State of West Virginia; and, if so, what was the amount of the taxes, interest, and damages due to the commonwealth,
67 State, county, district, or township therein, at the time of such redemption or attempted redemption, and what sum, if any, was actually paid thereon, and by whom and when, with all the facts in relation to any such redemption or attempted redemption.

10th. Whether the plaintiff or the defendant Willard Parker, or any person or persons under whom they claim ever had the possession of the lands or any part of them so claimed by the said Morrill; and, if so, to what extent, and for what years. Whether they claimed the same under the said Hopkins' patent or otherwise, and whether they paid the taxes thereon during the said possession, and particularly whether they paid such taxes for the year for which they were so forfeited, under the title claimed by said Morrill thereto.

11th. Any other matter or thing which he may deem pertinent or proper, or which either party may request. And if either party desire to have any surveying done of the said lands, or any part of them to enable the said commissioner to properly make up his report, said commissioner shall, at the request of such party, employ some competent and disinterested person to do such surveying and report the same to
him. But before the said commissioner shall proceed to execute
68 this decree he shall give to the attorneys of the parties at least 20 days' notice of the time and place of commencing the same, and that said commissioner report his proceedings under this decree with all the evidence taken by him and read before him to this court, and this cause is continued.

The following is a copy of a notice filed in said cause, with the endorsement of the clerk thereon:

Notice.

WELLSBURG, W. VA., *Aug.* 6, '74.

Hon. G. D. Camden, attorney of record for Lot M. Morrill, in the suit in equity now pending in the circuit court of Jackson County, W. Va., in which Willard Parker, jr., is plaintiff, and Willard Parker and Lot M. Morrill are defendants:

Please take notice that the pl't'f will file, before the 12th inst., with the papers of said cause, as authorized by sec. 7, ch. 130, code W. Va., 3 certificates signed by the auditor of public accounts of Virginia,
69 showing entry on the commissioners' books, and payment of taxes, &c., by the late James T. Watson, and his heirs afterwards, of and on the tract of 200,000 acres of land described in the pl't'f's bill.

WILLARD PARKER, JR.,
P'r G. PARKER,
His Attorney and Agent.

The original of which the foregoing is a copy, I mailed at said Wellsburg, Aug. 6th, 1874, directed to the Hon. G. D. Camden, Clarksburg, West Virginia.

G. PARKER.

WEST VA., *Brooke Co., ss:*

AUG. 18, 1874.

Subscribed and sworn to by G. Parker, before me in my said county.

J. D. NICHOLLS,
Notary Public for said Brooke County.

(Endorsement:) Received and filed in my office this August 29, 1874. Teste: N. S. Smith, clerk, cir. c't, J. Co.

Certificate.

I, William F. Taylor, auditor of public accounts for the State of Virginia, hereby certify that it appears from the records in my office, that Samuel M. Hopkins was charged upon the land-books of the commissioner of the revenue for Kanawha County, formerly in the State
70 of Virginia, but now in the State of West Virginia, for the year 1801, with 200,000 acres of land; that the same was afterwards transferred to Wood County, and in 1832 was transferred to Jackson County and charged on the commissioners' books of the two last named counties to James Watson, who, in September, 1834, paid the taxes remaining due on the whole tract up to the year 1834, he paying at that time $418.73; the taxes charged and chargeable on 19,266 acres, part of the 200,000 acres, with the damages, having been previously paid.

Given under my hand at the auditor's office in the city of Richmond, Virginia, this 3rd day of September, 1866.

WM. F. TAYLOR,
Aud. P. Acc'ts.

(Endorsement:) Received and filed in my office in the suit of Willard Parker, jr., vs. Lot M. Morrill and Willard Parker. August 10, 1874. Teste: N. S. Smith, clerk cir. c't, J. Co., W. Va.

Certificate 2.

71 I, William F. Taylor, auditor of public accounts for the State of Virginia, hereby certify that it appears from the records of this office that James Watson, of the city of New York, is charged upon the land-books of the commissioner of the revenue for the county of Wood (formerly in the commonwealth of Virginia, but now in the State of West Virginia), for the year 1831, with a certain tract of land described on said book as containing "200,000 acres on waters of Reedy Creek, &c.," and assessed with taxes thereon for said year, and that said land was not returned to this office as delinquent for said taxes.

Given under my hand at the auditor's office in the city of Richmond, Virginia, this 27th day of August, 1866.

WM. F. TAYLOR, *Aud.*

(Endorsement:) Received and filed in my office in the suit of Willard Parker, jr., vs. Lot M. Morrill and Willard Parker, August 10, 1874. Teste: N. S. Smith, clerk cir. c't, J. Co., W. Va.

72 *Certificate 3.*

I, Jonathan M. Bennett, auditor of public accounts, hereby certify that it appears from the records of this office, that James S. Watson of the city of New York, is charged upon the land-books of the commissioners of the revenue for the county of Jackson, from the year 1832 to the year 1845, both inclusive, with a certain tract of land described on said books as containing 200,000 acres, and cover'ng nearly all of Jackson County; that on the 12th day of September, 1834, said James T. Watson paid all taxes in arrear as properly chargeable on said tract, with legal damages up to the year 1834; that said tract of 200,000 acres of land appears upon the delinquent land lists returned by the sheriff of said Jackson County for the years 1840, 1841, 1842, 1843, 1844, & 1845, but does not appear upon the delinquent land lists returned by the sheriff of said county for 1833, 1834, 1835, 1836, 1837, 1838, or 1839; that the said tract of 200,000 acres of land was, in the year 1845, certified to the sheriff of Jackson County for sale for the taxes then in arrear, and on the 29th day of October, in the year last aforesaid, was sold and purchased by the commonwealth; and that on the 26th day of
73 January, 1848, the same was redeemed by the heirs of James T. Watson, and all of the taxes and damages paid up to the year 1848, that the said tract of 200,000 acres of land, described as aforesaid, stands charged upon the land-books of the commissioner of the revenue for said county of Jackson, for the years 1848, 1849, & 1850, and was returned delinquent for the non-payment of the taxes assessed thereon, for the three years last aforesaid, and in the year 1850, was certified to the sheriff of Jackson County, for sale for the delinquent taxes of 1848 & 1849, and was on the day of October or November, sold and purchased by the commonwealth. That on the 31st day of October, 1851, the heirs of James T. Watson, redeemed the same, and all taxes and damages due thereon, up to 1852; that in the same commissioner's land-books for 1852, 1853, 1854, and 1855, the same tract of 200,000 acres stands charged to the heirs of James T. Watson, with this qualification: in 1853, the quantity is reduced to 171,264 acres; in 1854, to 170,585, and in the year 1855 to 109,685 acres. I further certify that the said tract does not appear upon any of the delinquent land lists, returned by the sheriff of said county for the years 1852, 1853, 1854 or 1855.

74 Given under my hand at the auditor's office, in the city of Richmond, Va., the 10th day of March, 1859.

J. M. BENNETT.

(Endorsement:) Received and filed in my office in the suit of Willard Parker, jr vs. Lot M. Morrill and Willard Parker, August 10th, 1874. Teste: N. S. Smith, clerk, cir. c't. J. Co., W. Va.

The following is a copy of a notice filed in said cause, with the endorsement of the clerk thereon.

Notice.

JACKSON C. H., W. VA., *Aug.* 28, 1874.

Hon. G. D. Camden, attorney of record for Lot M. Morrill, in the suit in equity now pending in the circuit court of Jackson County, W. Va., wherein Willard Parker, jr., is pl't'f, and Willard Parker and Lot M. Morrill are def'ts:

SIR: Please take notice that the plaintiff will file, on the 29th day of Aug., 1874, with the papers of said cause, one certificate signed by the clerk of the county court of Wood County, showing that James
75 Watson of New York, is charged upon the land-books of the commissioners of the revenue for said county, for the years 1828, 1829, 1830, & 1831, with 200,000 acres of land, described as lying on the waters of Reedy Creek, &c., conveyed to him by Olivir Wolcott; annual tax, $16.00.

WILLARD PARKER, JR.,
Per V. S. ARMSTRONG,
Att'y of Record for said Parker.

STATE OF WEST VA.;
Jackson County, to wit:

Personally appeared before the undersigned authority, V. S. Armstrong, who made oath that he mailed to the H. G. D. Camden, at Jackson C. H., on the 28th day of August, 1874, directed to Clarksburg, Harrison County, West Va., the original notice of which the foregoing is a copy.

Aug. 29, 187 .

N. S. SMITH,
Clerk Cir. C't.

(Endorsement:) Rec'd & filed in my office this Augus' 29, 1874. Teste: N. S. Smith, clerk, cir. c't, J. Co.

Certificate.

I, William Hatcher, clerk of the county court of Wood County, West Va., certify that James Watson, of New York is charged
76 upon the land books of the commissioners of the revenue for said county, now in my office, for the years 1828, 1829, 1830, & 1831, with 200,000 acres of land, described as lying on the waters of Reedy Creek, and conveyed to him by Oliver Wolcott. Annual tax, $16.00.

Given under my hand this 22d day of August, 1874.

WILL. HATCHER, *C. W. C. C.*

(Endorsement:) Rec'd and filed in my office this August 29, 1874. Teste: N. S. Smith, clerk cir. c't J. Co.

The following is a copy of a notice with endorsement thereon filed in said cause:

Notice.

Hon. G. D. Camden, attorney of record for Lot M. Morrill, in a chancery cause, now pending in the circuit court of Jackson County, West Va., wherein Willard Parker, jr., is pl't'ff, and Willard Parker and Lot M. Morrill are defendants.

SIR: Please take notice that I shall on the 31st day of Aug. 1874, file with the papers in the above stated cause, the follow-
77 ing certificates to wit: One signed by P. B. Dobbins for T. Boggess, auditor, showing the payment into the State treasury of $334.80, and the redemption of the following described land, that being the State & State school taxes, on a tract of 100,000 acres of land in Jackson County, in Grant Township, returned delinquent for the year 1868, in the name of Willard Parker.

One signed by J. M. McWhorter, auditor, showing the redemption of a tract of 100,000 acres of land charged in Jackson County, and returned delinquent by the sheriff of said county for the taxes assessed thereon for the year 1859, and sold by said sheriff in the name of Willard Parker for the taxes aforesaid, in Nov., 1860, by paying into the State treasury the sum of $959.72, which sum included the purchase money paid by the State, interest thereon, and the taxes which would have been chargeable thereon for each subsequent year to and including the year 1867.

One signed by J. M. McWhorter, showing that a tract of land containing 100,000 acres, charged in Jackson County, was returned delinquent to the office of the auditor of public accounts, at Rich-
78 mond, Virginia, in the name of William H. Campbell, of the city of New York, for taxes assessed thereon for some years or years, from 1854 to 1858, inclusive, in which last year it was conveyed to Willard Parker, of said city. That said land was certified by said auditor for sale, and was sold by the sheriff of said county of Jackson, in the month of November, 1860, and purchased on behalf of the commonwealth of Virginia, and that the said Wm. H. Campbell, by the hands of Granville Parker, paid into the State treasury the sum of $1,254.75, in full, for the taxes and damages charged and chargeable on the said land in the name of said Campbell.

One other signed by E. A. Bennett, auditor, showing the redemption of 100,000 acres of land in Jackson County, Grant Township, charged to Willard Parker, and sold for the taxes due thereon for the years 1869 & 1870, by the said Willard Parker paying into the State Treasury the sum of $3,190.00.

Aug. 29, 1874.

WILLARD PARKER, JR.,
By V. S. ARMSTRONG,
His Att'y of Record.

STATE OF WEST VA.,
79 *Jackson County, to wit:*

Personally appeared before the undersigned authority, V. S. Armstrong, who made oath that on the 29th day of August, 1874, he mailed to the Hon. G. D. Camden, at Jackson, C. H., W. Va., and directed to Clarksburg, Harrison County, West Va., the original notice, of which the foregoing is a copy.

Aug. 30, 1874.

N. S. SMITH,
Clerk Cir. C't.

(Endorsement:) Rec'd and filed in my office Aug. 31, 1874. Teste: N. S. Smith, clerk cir. c't J. Co., W. Va.

Certificate No. 2.

STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, *October 23d*, 1869.

This certifies that Willard Parker, by G. Parker, by payment into the State treasury of three thousand and thirty-four $\frac{80}{100}$ dollars, evidenced by treasury receipt No. 23 of this date, has paid the State and State school taxes on a tract of 100,000 acres of land on Jackson County, in Grant Township, county of Jackson, returned delinquent

80 for the year 1868, in the name of Willard Parker. Fee 1.00, paid. 334.80; 1.00—$335.80.

P. B. DOBBINS,
For T. BOGGESS,
Auditor.

(Endorsement:) Rec'd and filed in my office, August 31st, 1874. Teste: N. S. Smith, clerk cir. c't J. Co., W. Va.

Certificate 2.

STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE, *Wheeling, June* 11, 1868.

This certifies that Willard Parker, of New York, by the hands of G. Parker, has paid into the State treasury the sum of nine hundred and fifty-nine and $\frac{72}{100}$ dollars, evidenced by treasurer's receipts No. 754 of this date, being the amount of taxes and damages charged and chargeable to said Willard Parker on a tract of one hundred thousand acres of land charged in Jackson County, returned delinquent by the sheriff of said county for the taxes assessed thereon in 1859, and sold by said sheriff, in the name of said Willard Parker, for the taxes aforesaid,
81 in November, 1860, and purchased on behalf of the commonwealth of Virginia at the sum of $104.50. Said sum of $959.72 includes the purchase money, with interest at ten per cent. from the date of sale to date, and the taxes which would have been chargeable thereon for such subsequent years to and including the year 1867, with a like per centum from the time the several amounts became due. The full amount due at this date on said tract of land, including sale and subsequent taxes to 1867, was $1,266.63, but the land had been improperly continued on the books for 1861 and 1862, and was returned delinquent for the taxes of said years, and redeemed from said delinquencies by payment into the treasury of $236.50, evidenced by treasurer's receipt and auditor's certificate of July 19th, 1865, which amount with 10 per cent. interest is deducted from the aggregate sum due on said land at this date. The foregoing I certify to be correct. Given under my hand the day and year first above written.

Fees, $1.00—$959.72=960.72.

J. M. McWHORTER,
Auditor.

82 (Endorsement:) Received and filed in my office August 31st, 1874.

Teste:

N. S. SMITH,
Clerk Cir. C't J. Co., W. Va.

Certificate 3.

STATE OF WEST VIRGINIA:

AUDITOR'S OFFICE,
Wheeling, June 11, 1868.

This certifies that, from the records in this office, it appears that a tract of (100,000) one hundred thousand acres of land charged in Jackson County was returned delinquent to the office of the auditor of public accounts at Richmond, Virginia, in the name of William W. Camp-

bell of the city of New York, for the taxes assessed thereon for some year or years from 1854 to 1858 inclusive, in which last year it appears to have been conveyed to Willard Parker of said city; that said land was certified by said auditor of public accounts for sale, and was sold by the sheriff of said county of Jackson in the month of November, 1860, and purchased on behalf of the commonwealth of Virginia.

83 It is further certified that said William W. Campbell has this day paid unto the State treasury, by the hands of Granville Parker, twelve hundred and fifty-four and $\frac{75}{100}$ dollars (evidenced by treasurer's receipt No. 755 of this date) in full for the taxes and damages charged and chargeable on said land in the name of said Campbell.

Given under my hand the day and year first above wri'ten.

Fees $1.00 & 1,254.75=$1,255.75.

J. M. McWHORTER,
Auditor.

(Endorsement:) Rec'd and filed in my office August 31st, 1874. Teste: N. S. Smith, clerk cir. c't, W. Va.

CERTIFICATE 4.

No. 786.] STATE OF WEST VIRGINIA.

Certificate of redemption of lands.

Name of person charged with taxes.	Quantity of land charged.	Local description of land.	For what taxes sold.	
			Year.	Taxes.
Willard Parker....	100,000	Jackson County, Grant Township	1869-'70. State .	1,247 10
			County ..	1,942 90
			Total.....	3,190 00

84 AUDITOR'S OFFICE,
Charleston, Oct. 19, 1872.

This certifies that Willard Parker, by payment into the State treasury of $3,190.00 *dollars*, evidenced by treasurer's receipt No. 82 & 83 of this date, has redeemed the tract of land above described, which has been heretofore returned delinquent and sold for non-payment of taxes as herein set forth.

E. A. BENNETT, *Auditor.*

RECAPITULATION.

Total of taxes and damages for which sold.....	$3,190 00
Fee.....	50
Total cost of redemption.....	$3,190 50

(Endorsement:) Rec'd and filed in my office August 31st, 1874. Teste: N. S. Smith, clerk cir. c't, J. Co., W. Va.

TUESDAY, *September 21st*, 1875.

And now at another day, to wit, came the parties by their attorneys in the case of—

85 WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

And made the follow' order:

This day came the parties, by their attorneys, and thereupon the defendant Lot M. Morrill, by his attorney, presented to the court and filed in the papers of this cause his petition, in the words and figures following, to wit:

To the honorable Joseph Smith, judge of the circuit court of the county of Jackson, in the State of West Virginia:

Your petitioner, Lot M. Morrill, of the State of Maine, respectfully represents that Willard Parker, jr., a citizen and inhabitant of the State of New York, filed his bill in chancery in your honor's court against Willard Parker, a citizen and inhabitant of the said State of New York, and your petitioner, a citizen and inhabitant of the State of Maine, seeking to recover from your petitioner certain lands situated in the said county of Jackson, in said State of West Virginia, so that the bill shows upon its face that neither of the parties to the suit reside in the State of West Virginia, and that it is a controversy wholly between citizens of different States.

86 Your petitioner further states that the matter in dispute in said suit exceeds in value five hundred dollars, exclusive of costs. That no term of the said circuit court for the said county of Jackson has sat at which the said cause could have been tried, and that your petitioner desires to have the said suit removed from the said circuit court of the county of Jackson to the circuit court of the United States, holden at Parkersb'g, for the district of West Virginia.

Your petitioner therefore prays that your honorable court *to* accept the pet'tion and bond filed with it, and proceed no further in said suit; and your petitioner will ever pray, &c.

Sept. 4, 1875.

LOT M. MORRILL.

Also filed the bond of the said Lot M. Morrill, with Gideon D. Camden and Henry Flesher, his securities, in the words and figures following, to wit:

Know all men by these presents that we, Lot M. Morrill, of the State of Maine, Gideon D. Camden, of the county of Harrison and State of West Virginia, and Henry C. Flesher, of the county of Jackson of the State last aforesaid, are held and firmly bound

87 unto Willard Parker, jr., of the State of New York, in the penal sum of one thousand dollars, for the payment whereof we bind ourselves and heirs jointly and several'y, firmly by these presents. Sealed with our seals and dated this 4th day of September, 1875.

The consideration of the above obligation is such that, whereas the above-named Willard Parker, jr., has instituted his suit and filed his bill in equity against the above Lot M. Morrill and Willard Parker in the circuit court, for the county of Jackson, in the State of West Vir-

ginia, for the recovery *of* the said Lot M. Morrill of *a* certain lands situate *situate* in the said county of Jackson, exceeding in value the sum of five hundred dollars, exclusive of costs, which the said Lot M. Morrill desire' to remove from the circuit court of the said county of Jackson to the circuit court of the United States, holden at Parkersburg, for the district of West Virginia, for which purpose he has filed his petition in said suit in said State court:

Now the condition of the foregoing obligation is such that if the above-bound Lot M. Morrill shall enter in the said circuit court
88 of the United States on the first day of its next session a copy of the record in said suit, and shall pay all costs that may be awarded against him by the said circuit court of the United States, if the said court shall hold that said suit was wrongfully or imperfectly removed thereto, then this obligation to be void; otherwise to remain in full force and virtue.

LOT M. MORRILL. [SEAL.]
G. D. CAMDEN. [SEAL.]
HENRY C. FLESHER. [SEAL.]

Whereupon the said defendant Morrill proved to the satisfaction of the court that the matter in dispute in this cause exceeds, exclusive of costs, the value of five hundred dollars, and the said Gideon D. Camden and Henry C. Flesher, t'o of the obligors in said bond being present in court and acknowledged the execution thereof by them, and the execution of the said bond by the said Morrill was proved to the satisfaction of the court, and thereupon the said defendant Morrill moved the court to remove the cause to the circuit court of the United States for the district of West Virginia, and the court being satisfied
89 that the said bond and sureties thereon are good and sufficient with the condition required by law, and that the matter in dispute in this cause is wholly between citizens of different States, which can be fully determined as between them in the said circuit court of the United States, and that this motion is made in due time.

It is considered and ordered by the court that the said petition and bond be accepted, and that this cause be removed to the said circuit court of the United States for the district of West Virginia, and be proceeded in no further in this court.

STATE OF WEST VIRGINIA,
County of Jackson, ss:

I, N. S. Smith, clerk of the circuit court for the said county of Jackson, do hereby certify that the foregoing is true transcript from the records of said court, and contains a full transcript of the records, papers, and proceedings of said in the case of Willard Parker, jr., against Willard Parker and Lot M. Morrill, a chancery case lately pending in the said circuit court for the said county of Jackson, and by an
90 order of said court made on the 21st day of September, 1875, removed from said court to the circuit court of the United States for the district of West Virginia.

Given under my hand this 22d day of September, 1875.

N. S. SMITH,
Clerk Cir. C't, J. Co.

91 And at another day, to wit, on the 21st day of September, 1876, the following order was made and entered:

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

This day came the plaintiff, by his attorney, and, on his motion, a rule is awarded against the defendant Morrill to show cause, if any he can, at the next term of this court, why this cause should not be remanded to the circuit court of Jackson County, from whence it was removed to *to* this court.

And it is ordered that a service of said rule on G. D. Camden, esq'r., the attorney of record of the said Morrill in this cause, shall be a sufficient service thereof.

And at another day, to wit, on the 27th day of September, A. D. 1876, the following order was made and entered:

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

92 This day come the *the* defendant, Lot M. Morrill, by his attorney, and moved the court to discharge the rule entered by the plaintiff on a former day of this term, and this cause is continued until the next term.

And on another day, to wit, on the 22d day of November, 1877, the following order was made and entered:

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery upon a rule to remand to State court.

This day came the parties, by their attorneys, and the attorney for the plaintiff suggesting a diminution of the record sent up from the State court, on his motion a writ of certiorari is awarded to the clerk of the circuit court of Jackson County, returnable here on the 8th day of January, 1878, commanding him to certify and send to this court a complete transcript of the record and proceedings in this cause in said court, and showing particularly how many terms of said court
93 were held after the 5th day of March, 1875, and before the term at which this cause was transferred to this court, giving the date of the commencement and close of each term, and showing whether they were regular, special, or adjourned terms.

And at another day, to wit, on the 19th day of January, A. D. 1878, the following order was made and entered:

WILLARD PARKER JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

This day came the parties by their attorneys, and the clerk of the circuit court of Jackson County having failed to make return to the

writ of certiorari awarded in this cause in November last, on motion of the complainant, it is ordered that a new writ of certiorari be awarded to the said clerk of the circuit court of Jackson County, commanding him to certify to this court a true copy of the records, papers, and proceedings in said circuit court of Jackson County in this cause, according to said order made in November last, by the 8th day of February, 1878.

94 Said writ of certior*'ia* is in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
District of West Virginia, ss:

The President of the United States of America to the clerk of the circuit court of Jackson County, West Virginia, greeting:

For certain causes moved before the judges of our circuit court of the United States for the district of West Virginia, you are hereby commanded, under the seal of the said circuit court of Jackson County, West Va., the record and proceedings in a certain action in equity between Willard Parker, jr., plaintiff, and Willard Parker and Lot M. Morrill, defendants, with all things touching the same, as fully and wholly as the same are before said circuit court of Jackson County, W. Va., and showing particularly how many terms of said court were held after the 5th day of March, 1875, and before the term at which this cause was transferred to this court, giving the date of the commencement and close of each term, and showing whether they were regular or adjourned terms, to the judges of our said circuit court of the

95 United States for the district of West Va., at the city of Parkersburg, on the 8th day of February, 1878, you do send and certify enclosed together with this writ.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 26th day of January, 1878, and in the 102d year of the Independence of the United States of America.

W. H. HATCHER, *Clerk.*

(Endorsement:) To the clerk of the circuit court of the United States for the district of West Va.:

I accept legal service of the within writ.

JNO. S. McKOWEN,
Clk Jackson Co. Cir. C't, W. Va.

FEBRUARY 5TH, 1878.

In obedience to the foregoing writ of certior*'ia* the clerk of the circuit court of Jackson County, West Va., filed in the clerk's office of the circuit court of the United States for the district of West Virginia, a transcript of the record, papers, and proceedings had in said court, it being a copy of the record as filed by defendant Morrill, with the addition of the following statement of *of* the number of terms of said court after the 5th day of March, 1875, and before the removal of this

96 cause, and is in words and figures following, to wit:

A circuit court was held for the county of Jackson, at the court-house thereof, commencing on the 13th day of March, 1875, and closing on the 20th day of March, 1875, which said term was a regular term of said circuit court, and was adjourned to July 19th, 1875.

A circuit court was held for the county of Jackson, at the court-house thereof, commencing on the 19th day of July, 1875, and closing on the

21st day of July, 1875, which said term was an term of said March term of said circuit court.

And I do certify that there was but one regular term of said court had after the 5th day of March, 1875, which term commenced on the 15th day of March, 1875, and was adjourned as above stated. And I do further certify that this cause was removed at a regular term thereof commencing on Monday, September the 20th, 1875, at which regular term this cause was removed.

STATE OF WEST VIRGINIA,
County of Jackson, to wit:

I, John S. McKown, clerk of Jackson County circuit court, in the county of Jackson, do certify that the foregoing record contains
97 all the proceedings in the chancery cause, Willard Parker, jr., plaintiff, and Willard Parker and Lot M. Morrill, defendants, as fully and wholly as they are before said circuit court of Jackson County, West Virginia, and also showing how many terms of said court were had after the 5th day of March, 1875, and before the term at which said cause was transferred from this court to the circuit court of the United States for the district of West Virginia.

In testimony whereof, I do hereunto set my hand and annex the seal of said circuit court, this 5th day of February, 1878.

{ CIRCUIT COURT JACKSON CO., WEST VA. SEAL. } JNO. S. McKOWN, *Clerk.*

And at another day, to wit, on the 11th day of June, 1878, the following order was made, to wit:

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

This day came the parties, by their attorneys, and the court having maturely considered the motion of the plaintiff to remand this cause to the circuit court of Jackson County, in this State, doth order that
98 said motion be overruled, and this cause is con'ued until the next term.

And at another day, to wit, on the 24th day of September, 1878, the following order was made and entered:

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

This cause came on this day, to be heard upon the papers heretofore read by counsel, on consideration whereof it is adjudged, ordered, and decreed that the bill of the complainant be dismissed as to the defendant Lot M. Morrill, and that the said defendant, Lot M. Morrill, recover of the complainant his costs by him expended, as well in this court as in the circuit court of Jackson County, in the State of West Virginia, from which court this cause has been removed into this court; and on motion of the defendant, Lot M. Morrill, he hath leave to withdraw from the papers of this cause the patents filed, with the depositions taken by him and filed in this cause, upon leaving attested copies thereof; and as to the other defendant, this case is continued.

99 The depositions and patents referred to in the foregoing order are in words and figures following, to wit:

Persuant to the notice and commission annexed, on the 12th day of November, 1877, at the office of W. H. Mackey, No. 67 W. 3d st., in the city of Cincinnati, in the State of Ohio, I, N. B. Wescott, a notary public in and for the county of Hamilton, State of Ohio (at the city of Cincinnati), not being of counsel or attorney for either of the parties in the cause hereinafter named, or interested in the event of the same, I took the deposition of Robert P. Steed, to be used as evidence in behalf of Lot M. Morrill at the hearing of a case in chancery in the circuit court of the United States for the district of West Virginia, holden at Parkersburg, wherein Willard Parker, jr., is complainant, and Willard Parker and Lot M. Morril are defendants.

G. D. Camden, attorney for Lot M. Morrill, being present, and no one appearing for the other parties, ROBERT P. STEED, a witness of lawful age, for Lot M. Morrill, being by me duly cautioned and sworn to testify to the whole truth, deposeth and saith, in answer to inter'ogatories propounded by the attorney for the said Lot M. Morrill that, I am by profession a lawyer, and have been such for about fifteen years;

100 I am also a practical surveyor of lands, and have been engaged in that business for about twenty-five years. I am well acquainted with the lands claimed by Lot M. Morrill, one of the defendants, in the counties of Jackson, Wirt, and Roane, West Virginia.

At the time of the institution of this suit he claimed about twenty-five thousand acres in Jackson County, consisting of the following tracts, to wit: No. 2, fifteen hundred acres, Sandy River; No. 6, fifteen hundred acres; No. 7, fifteen hundred acres; No. 8, thirty-five hundred acres on Elk Fork of Mill Creek; No. 11, one thousand acres; No. 13, fifteen hundred acres; No. 14, fifteen hundred acres, the same lot involved in the suit of Armstrong vs. Morrill, reported 13th Wal.; No. 15, fifteen hundred acres; No. 18, one thousand acres; No. 19, thirteen hundred and thirty acres; No. 21, twelve hundred acres; No. 26, fifteen hundred acres; No. 27, three thousand three hundred and sixty acres; No. 29, fifteen hundred acres; and No. 32, fifteen hundred acres, the patents for most of which I now produce, constitut'g the bundle accompanying this deposition. The said Morrill also claimed other lands in Jackson County, but abandoned them in consequence of the adverse possession of the squatters on them.

101 In the year eighteen hundred and fifty-seven (1857) I was employed by the said Morrill to ascertain the names of the set'lers on his lands in order to institute actions of ejectment for the recovery of the possession thereof. I ascertained that a very large number of set'lers were upon them, principally under junior patents to themselves or those under whom they claim. Some of these claims under Moriah Nixon who claimed a portion of the said lands as heir at law of Robert Morris, who once owned them, but conveyed them to what was called the North American Land Company, but none of them claimed under the Hopkins patent as I ever knew or heard of. Suits were instituted in the United States district court for Western Virginia, in the year 1857, '58, & '59, against about one hundred and thirty-six (136) persons, mostly residing in the county of Jackson. No suits were instituted against those whose possessions were supposed to be of a sufficient length of time to bar a recovery. Before that time and since the said Morrill, through his agents, sold to various persons portions

of his lands, who have held posses'ion under him ever since. At the time of the institution of this suit I was actively engaged with another agent of the said Morill's in compromisi'g and selli'g to the set'lers a portion of said lands, and in order to effect such purpose I was frequently on the lands, surveying and laying them off. Am well
102 satisfied that at the time of the institution of this suit that none of them was in the actual possession of any person claiming under the Hopkins patent. I feel confidence in stating that at the time of instituting the said suit that all of the lands claimed by the said Morrill in the said county of Jackson were in the posses'ion of the said Morrill, or those claiming under him, or of those claiming adverse to him under claims other than the Hopkins patent. Deponent further says that he was born in Virginia, in that part of Virginia, now called West Virginia, and lived there until the year 1874, when I moved to Ohio, and am now a resident of the city of Cincinnatti, State of Ohio.

And further this deponaant saith not.

ROBERT P. STEED.

STATE OF OHIO,
Hamilton County, ss:

I, Nathaniel B. Wescott, a notary public in and for Hamilton County, State of Ohio, before whom the foregoing depositions were sworn to, do certify that the same were taken at the time and place mentioned in the notice annexed and caption hereto, and that the same was reduced to writing by me and by no other person, and that after the same was so reduced to writing it was subscribed by the
103 said deponant.

Given under my hand and seal of office, this the 12th day of November, 1877.

NATHANIEL B. WESCOTT.

To the honorable JAMES H. FERGUSIN, attorney of record for William Parker, jr.

Take notice that on the 12th day of November, 1877, at the law office of W. H. Mackay, No. 67 West 3d street, in the city of Cincinnati, in the State of Ohio, I will take the deposition of Robert P. Steed to be read as evidence in behalf of Lot M. Morrill, at the hearing of a case in chancery pending in the circuit court of the United States for the district of West Virginia, holden at Parkersburg, wherein Willard Parker, junior, is complainant, and Willard Parker and Lot M. Morrill are defendants.

2d November, 1877.

G. D. CAMDEN,
Attorney for Lot M. Morrill.

(Endorsed:)

STATE OF WEST VIRGINIA,
Kanawcha County, ss:

This day personally appeared before me, Peter Fontain, a notary public in and for the county of Kanawha, and State aforesaid, Jaspur Y. Moore, who being duly sworn, deposes and says
104 that he served a copy of the within notice on the within-named James H. Ferguson, by delivering to him in person a copy hereof on the 6th day of November. Given under my hand this 6th day of November, 1877.

P. FONTAINE,
Notary Public in and for Kanawcha Co., West Va.

The President of the United States of America, to any notary public or United States commissioner in the southern district of Ohio, greeting:

Know ye that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with full power and authority to examine Robert P. Steed on his corporal oath, as witness in a cause depending in the circuit court of the United States for the fourth circuit and the district of West Virginia, wherein Willard Parker, jr., is plaintiff, and Willard Parker and Lot M. Morrill are defendants, upon the part of Lot M. Morrill upon the inter'ogatories annexed to this commission, and therefore you are hereby commanded that you, at certain days and places to be appointed by you for that purpose, do cause the said Robert P. Steed to come before you
105 and there examine him on oath upon the said inter'ogatories and that you take such examination and reduce the same to writing and return the same annexed to this writ, closed up under your seal into the said circuit court before the judge thereof with all convenient speed.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, at Parkersburg, in said district, this 10th day of November, A. D. 1877, and of the Independence of the United States of America the 102d.

W. H. HATCHER,
Clerk C. C. U. S., D. of W. Va.

The plaintiff excepts and objects to the reading of the foregoing deposition of R. P. Steed upon the following grounds:

1st. Because the same was taken within less than 20 days before the sitt'ng of the court.

2d. Because reasonable notice of the time and place of taking the same was served upon his attorneys in the case.

And upon the objection he will read the affidavit of James H. Ferguson, his attorney, herewith filed.

JAMES H. FERGUSON,
Att'y for Plaintiff.

106 DISTRICT OF WEST VIRGINIA,
Wood County, to wit:

WILLARD PARKER, JR.,
vs.
WILLARD PARKER AND LOT M. MORRILL. } In chancery.

James H. Ferguson, being duly sworn, says that the notice to take the deposition in this cause of Robert P. Steed was served upon him, as the attorney of the plaintiff in this cause, on the 6th day of November, 1877, at Charelston, in the county of Kanawha, while the United States district court for the district of West Virginia was in session at that place, and that said court remained in session until after the day fixed in said notice to take said deposition; that his professional engagements in said court were such that he could not leave the same to attend the taking of said depositions at the time mentioned in said notice; that his client, the plaintiff in said suit, lives in the city of New York, and that the time between the service of said notice on him and the day fixed for taking of said deposition was not sufficient to enable him to communicate with his client and attend the taking of said deposition at Cincinnati, even if he had not been engaged in the said court as aforesaid.

JAMES H. FERGUSON.

107 Taken, sworn, and subscribed before me this 22d day of Nov.' 1877.

Subscribed and sworn to in open court on the 22d Nov., 1877.

W. H. HATCHER, *Clerk.*

The patents referred to in the foregoing deposition are in words and figures following, to wit:

No. 377.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of a land-office treasury warrant, number seventeen thousand four hundred and eighty-seven, and dated the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto the said Albert Gallatin, assignee of Samuel Hannay, ass. of Albert Gallatin, ass. of Stephen Lericlly, a certrain tract or parcel of land containing fifteen hundred acres, by survey bearing date the twenty-third day of July, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoining and between Harrison and McFarland surveys, on Mill Creek, and bounded

108 as follows: The tract beginning at a dogwood and gum, corner to Savery de Valcoulon's first survey and Morrison's survey, and thence with a line of said Morrison's survey south forty degrees east four hundred and eighty poles, crossing a fork of the right-hand fork of Mill Creek, and a branch of said fork twice to a white oak; north fifty degrees east five hundred poles, crossing a run, to a poplar; thence with a line of McFarland's survey north forty degrees west four hundred and eighty poles, crossing a run, to a white oak; south fifty degrees west five hundred poles, crossing a fork of the right-hand fork of Mill Creek, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Albert Gallatin and his heirs and assigns forever. In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

109 Albert Gallatin is entitled to the within-mentioned tract of land.

JOHN HANRE, *Re. L. Off.*

10 FEB'Y, 1786.

(Indorsed:) 15*s.* No. 377. Albert Gallatin. 1,500 acres. Harrison County. Ex'd, recorded, and t'x'e.

9*s.* No. 380. 10 Feb'y, 1786. Albert Gallatin. 1,000 acres. Ex'd, recorded, and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all whom these presents shall come, greeting:

Know ye that by virtue of and in consideration of part of a land-office treasury warrant, number seventeen thousand five hundred and six-

teen, and issued the 27th day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Albert Gallatin, ass'e of Stephen Lacoster, a certain tract or parcel of land, containing one thousand acres by survey, bearing date the seventeenth day of August, one thousand seven hundred and eighty-
110 four, lying and being in the county of Harrison, adjoining Savery de Valecoulon's 23d entry and extending westerly, and bounded as follows, to wit: Begin'ing at a sugar-tree, corner to said Savary's 9th survey; thence, with a line of the same, north twenty-one degrees and thirty minutes east three hundred and sixty-six poles to a post; thence, by lands of John Allison, north fifty degrees west two hundred and eighty-three poles to three dogwoods; south forty degrees west five hundred and sixty-six poles, crossing a run to an ash and beach; thence south seventy-eight degrees east four hundred and fifty poles, crossing a run, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances to the said Albert Gallatin and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

111 Albert Gallatin is entitled to the within-mentioned tract of land.

JOHN HANREE, *R. L. Off.*

10*s*. No. 381. 10 Feb'y, 1786. Albert Gallatin. 1,500 acres. Harrison County. Ex'd, recorded, & ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of a land office treasury warrant, number twenty-one thousand nine hundred and eighty-six, and issued the twenty-fourth day of December, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Albert Gallatin, ass'ee of Francis Graves, ass'ee of David Anderson, a certain tract or parcel of land, containing fifteen hundred acres, by survey bearing date the fourth day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoining Savary de Valcoulon's 46th entry on the southeast side, and extending southeast, and bounded as follows, to wit:
112 Beginning at poplar, corner to Savary de Valcoulon's 10th survey, and thence, with a line of said survey, south sixty-five degrees west eight hundred and forty-nine poles to a small maple; thence south twenty-five degrees east two hundred and eighty-three poles, crossing a run, to a red oak; north sixty-five degrees east eight hundred and forty-nine poles to a white oak; north twenty-five degrees west two hundred and eighty-three poles, crossing a branch of the main right-hand fork of Mill Creek, to the beginning, with its appurtenances; to have and to hold the said tract of land with its appurtenances to the said Albert Gallatin and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day

of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Albert Gallatin is entitled to the within-mentioned tract of land.

JOHN HANRE, *Re. L. Off.*

113 15*s*. No. 384. 10 Feb'y, 1786. Albert Gallatin. 1,500 acres. Harrison County. Ex'd, recorded, and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand five hundred and one, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto the said Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or parcel of land, containing one thousand five hundred acres, by survey bearing date the sixteenth day of August, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoining Savary de Valcoulon's 17th entry and bounded as follows, to wit: Beginning at a sugar-tree, corner to Savary de Valcoulon's 14th survey, & thence with the line of the same S. 60°, W. 188 poles, to a gum and linn; thence with a line of John Allison's 10th survey, S. 50 E. 283 poles, crossing the second left-hand fork
114 of Mill Creek, to a white oak; thence S. 11 W. 450 poles, crossing Mill Creek to a white oak; N. 40, E. 378 poles, crossing the right-hand upper branch of Mill Creek to an ash; N. 39 E. 600 po's, crossing the left-hand upper branch of Mill Creek and a run to two sugar-trees; S. 878 W. 520 po's, crossing the 2d left-hand fork of Mill Creek and four drains to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances, to the said Albert Gallatin and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esq., governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Albert Gallatin entitled to the within-mentioned tract of lands.

JOHN HANNRE, *Re. L. Off.*

115 22*s*. No. 387. 10 Feb'y, 1786. Albert Gallatin, 1,830 acres, Harrison County. Ex'd, recorded, & ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of a land-office treasury warrant numbered seventeen thousand four hundred and eighty-three, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or parcel of land containing eighteen hundred and thirty acres, and by survey, bearing date the seventeenth day of August, one thousand

seven hundred and eighty-four, lying and being in the county of Harrison, adjoining Savary de Valcoulon's survey on the south, and bounded as follows, to wit: Beginning at a post, corner to Savary's 20th survey, and thence with a line of said survey north eighty degrees west three hundred and thirty-one poles, crossing a branch of Mill Creek to two sugar-trees; thence south thirty-nine degrees west six hundred poles,
116 crossing the *the* left-hand upper branch of Mill Creek to an ash; east nine hundred and sixty poles, crossing four runs to a black oak; north three degrees, west one hundred and sixty-one poles, crossing a run to a poplar; north forty degrees west three hundred and two poles to the beginning; with its appurt*a*nances; to have and to hold the said tract or parcel of land with its appurt*a*nances to the said Albert Gallatin and his heirs forever.

In witness whereof the said Patrick Henry, esq., governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the tenth day of Feb'y, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Albert Gallatin is entitled to the within-mentioned tract of land.

JOHN HANRE, *Re. L. Off.*

117 No. 390. 25' March, 1786. Savary de Valcoulon and Albert Gallatin, 1,500 acres, Harrison County. Ex'd & recorded, & ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of a land-office treasury warrant number seventeen thousand four hundred and seventy-nine, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulon & Albert Gallatin, assignees of Stephen Lacosta, a certain tract or parcel of land containing fifteen hundred acres, by survey bearing date the fifteenth day of September, 1874, lying and being in the county of Harrison (formerly Monongalia), on the main right-hand fork of Mill Creek, adjoining and between Savary de Valcoulon's 20th and 21st entries, and bounded as followeth, to wit:

Beginning at a white oak corner to Savary and *and* Gallatin's 3d
118 survey, and running thence N. 65 E. 849 poles, crossing several branches of the aforesaid fork, to a hickory; thence by lands of said Savary and Gallatin, N. 25 W. 283 poles, crossing a run, to a white oak; S. 65 W. 849 poles, crossing a run and the two forks of the aforesaid right-hand fork of Mill Creek to a dogwood; S. 25 E. 283 poles, crossing the right-hand fork of the aforesaid main right-hand fork of Mill Creek, to the begin'ing, with its appurt*a*nances; to have and to hold the said tract or parcel of land with its appurt*a*nances to the said Savary de Valcoulen and Albert Gallatin and their heirs and assigns forever.

In witness whereof the said , governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and eighty-six.

[SEAL.] P. HENRY.

Savary de Valcoulen and Albert Gallatin are entitled to the within-mentioned tract of land.

JOHN HANREE, *Re. L. Off.*

119 6s. No. 391. 29 March, 1786. Savary de Valcoulen and Albert Gallatin. 3,500 acres. Harrison County. Ex'c' recorded and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting.

Know ye, that by virtue and in consideration of a *land office* land-office treasury warrant, number sixteen thousand five hundred and ninety-five, and issued the twenty-sixth day of May, one thousand seven hundred and eighty three, there is granted by the said commonwealth unto Savary de Valcoulen and Albert Gallatin, a certain tract or parcel of land containing three thousand five hundred acres, by survey bearing date the fifteenth day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, on the waters of Mill Creek, adjoining Savary de Valcoulen's 40th entry on the south side and extending southeast and northeast, and bounded as follows, to wit: Begin'ing at a white oak, corner to said Savary
120 de Valcoulen's 21st survey, and thence run'ing with a line of the same south forty-one degrees, west seven hundred and fifty-six poles, crossing two right-hand branches of Mill Creek, to a white oak; south twenty-four degrees east three hundred poles, crossing a run, to a hickory; east four hundred and thirty-seven poles, crossing a run, to a white oak; north twenty degrees east one thousand poles, crossing two small branches of Reedey Creek, a branch of Little Kanawha, to a dogwood; south sixty-nine degrees west five hundred and ninety-two poles, crossing a run to a black oak; west one hundred and eight poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances to the said Sava'y de Valcoulen and Albert Gallatin, and their heirs and assigns forever. In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the twenty-ninth day of March, in the year of our Lord one thousand seven hundred and eighty-six and of the commonwealth the tenth.

[SEAL.] P. HENRY.

121 Savary de Valcoulen and Albert Gallatin are entitled to the within-mentioned tract of land.

JOHN HAUM, *R. L. Off.*

9s. No. 394. 9 May, 1786. Savary de Valcoulen and Albert Gallatin. 1,500 acres. Harrison County. Ex'd, recorded, ex'd.

Beverley Randolph, esquire, lieutenant-governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of a land-office treasury warrant, number seventeen thousand four hundred and ninety-three, issued the twenty-fourth day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulen and Albert Gallatin, a certain tract or parcel of land containing fifteen hundred acres, by survey bearing date the twenty-fourth day of June, one thousand seven hundred and eighty-five, lying and being in the county of Harrison on the right-hand fork of Mill Creek, adjoining Albert Gallatin's 15th entry, and bounded as

followeth, to wit: Beginning at a post corner to John Harvie and
122 others, two hundred and thirty-four poles from a post corner to the survey made in the afore-mentioned fifteenth entry of Albert Gallatin (said Harvie and others claiming the land between the two posts, which have fall*en*; said fifteenth entry by prior entry, and runn'g thence with said Harvie and others, land, south fifty degrees west 560 p., crossing a fork of said left-hand fork to a sugar tree; south sixty-nine and a half degrees west 494 p., crossing a run to two iron-woods and poplar; thence S. 40 E. 369 poles, crossing a run and two drains to an ash; thence by lands of Morrison and others, N. 50 E. 829 poles, crossing a run and the aforesaid fork to a white oak; thence by lands of John McFarland N. 79 E. 240 poles, to a gum and white oak; thence by lands of Sarah Proviance, N. 41 W. 306 poles, to the beginning, with its appurt*e*nances; to have and to hold the said tract or parcel of land with its appurt*e*nances to the said Savary de Valcoulen & Albert Gallatin and their heirs forever.

In witness whereof the said Beverley Randolph, esq., lieutenant-governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the ninth day of May, in the year of our Lord one thousand seven hundred and eighty-seven, and of the commonwealth the eleventh.

[SEAL.] BEVERLEY RANDOLPH.

123 Savary de Valcoulen and Albert Gallatin are intit*l*led to the within-mentioned tract of land.

JOHN HAUM, *Re. L. Off.*

7*s*. No. 396. 10 Feb'y, 1786. Savary de Valcoulen. 1,500 acres. Harrison County. Ex'd, recorded, ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand five hundred and two, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulen, ass'ee of Albert Gallatin, ass. of Stephen Lacosta, a certain tract or parcel of land containing fifteen hundred acres, by survey bearing date the eighth day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoining Albert Gallatin' 33d entry, and extending along Allison's lands, and bounded as followeth, to wit: Begin'i'g at a post corner to Albert Gallatin's 8th survey, and thence ru'ning by vacant lands S. 41 E., crossing the main right-hand fork of Mill Creek, 350 poles to a
124 *a* poplar; N. 42 E. 840 poles, crossing said fork and run to an ash; N. 78 W. 395 poles, to an ash and two be*a*ches; thence by lands of John Allison S. 60 W. 304 poles, to a*n* white oak; south fifty-five degrees west two hundred and fifty-six poles, crossing Mill Creek twice, to the begin'ing, with its appurt*e*nances; to have and to hold the said tract or parcel of land with its appurt*e*nances to the said Savary de Valcoulen and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the

tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Savary de Valcoulen is entitled to the within-mentioned tract of land.

JOHN HAUM, *Re. L. Off.*

125 9s. No. 397. 10 Feb'y, 1786. Savory de Valcoulen. 1,500 acres. Harrison County. Ex'd, recorded and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand five hundred and three, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulen, ass. of Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or parcel of land containing fifteen hundred acres, as by survey bearing date the eighth day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison on the main right-hand fork of Mill Creek, adjoining Albert Gallatin's former entry on Mill Creek, and extending up both sides said fork, and bounded as followeth, to wit: Beginning at an ash corner to said Gallatin's surveys, and thence running S. 42, W. 840 poles, cross-
126 ing said fork to a poplar; S. 25 E. 283 poles, crossing the branch of the fork to a white oak; N. 65° E. 110 poles, crossing a branch of the fork to a white oak; north nineteen degrees east six hundred and eighty poles, crossing three runs to a sugar tree, and thence by lands of Albert Gallatin north seventy-eight degrees west fifty-four poles, crossing a run to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances to the said Savary de Valcoulen his heirs and assigns forever.

In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Savary de Valcoulen is entitled to the within-mentioned tract of land.

JOHN HAUM, *R. L. Off.*

127 5. Savary de Valcoulen. 10 Feb., 1876. No. 406. 17,000 acres. Harrison County. Ex'd, recorded, ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand four hundred and seventy-eight, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savery de Valcoulen, ass'ee of Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or parcel of land containing seventeen hundred acres, by survay being dated the sixth day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, on the lower side of Mill Creek, beginning at the

upper right-hand corner of Major John Swan's, and continuing downwards, and bounded as followeth, to wit: Beginning at a white oak and maple corner to said Swan's, and then cerunning by lands of
128 Robert Rutherford S. 50° W. 296 poles, crossing a run to a white oak and beach, then; by lands of Albert Gallatin's south thirty-five degrees west four hundred and forty-two poles, to a birch on the bank of the second right-hand fork of Mill Creek; then by lands of William John south fifty-five degrees east, crossing the 2d right-hand fork of Mill Creek seven hundred and ten poles to a dogwood; north five degrees west nine hundred and fifty poles, crossing the said fork to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances, to the said Savary de Valcoulen and his heirs and assigns forever. In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of said commonwealth to be affixed at Richmond on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Savary de Vacoulen is entitled to the within-mentioned tract of land.

JOHN HAUM,
Re. L. Off.

129 10*s.* 10 Fe'y, 1786. Savary de Valcoulen. No. 408. 1,500 acres. Harrison County. Ex'd, recorded, and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of land-office treasury warrant, number twenty thousand seven hundred and sixty-three, and issued the fifteenth day of November, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulen, ass'ee of Albert Gallatin, ass'ee of Henry Banks, ass'ee of James Barbour, ass'ee of Joseph Strother, a certain tract or parcel of lands, containing fifteen hundred acres, by survey being dated the seventh day of September, one thousand seven hundred and eighty-four, lying and being in the county of Harrison adjoining Albert Gallatin, 33d entry, extending southeast, and bounded as followeth, to wit: Beginning at a post corner to said 8th survey, and thence running on the line of said survey S. 61° W. 785 poles, cross-
130 ing the main right-hand *of* fork of Mill Creek and *and* two branches of the right-hand fork of the same to a dogwood; thence south 25° east 283 poles, crossing a branch of the said 2d right-hand fork to a maple; N. 65° E. 849 po. to a poplar; N. 41 W. 350 poles, crossing the main right-hand fork of Mill Creek, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances to the said Savary de Valcoulen and his heirs and assigns forever.

I' witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

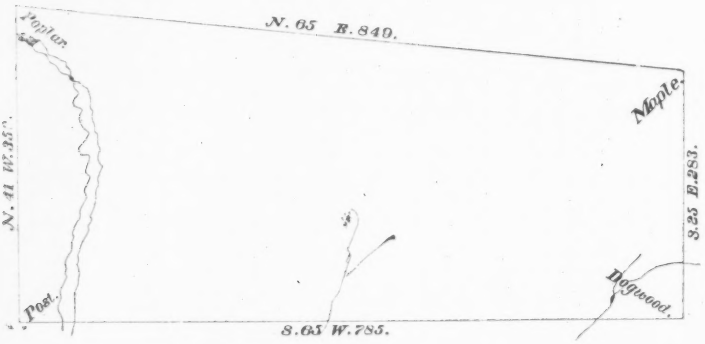
[SEAL.] P. HENRY.

Savary de Valcoulen is entitled to the within-mentioned tract of land.

JOHN HAUM,
Re. L. Off.

Attached to the foregoing patent is the following diagram and description to wit:

131 No. 10.



Sept. 7th, 1784. Albert Gallatin surveyed for Savary de Valcoulen, ass. of Albert Gallatin, ass'ee of Henry Banks, ass'ee of James Barbour, ass'ee of Joseph Strother, 1,500 acres of land in Monongalia County, in part of a land-office treasury warrant of 3,000 acres, No. 20,763, dated the 15 of November, 1783, entered the 19th of July, 1784, adjoining Albert Gallatin's 33d entry, extending southeast and bounded as followeth, to wit: Beginning at a post corner to said Gallatin's 8th survey, and thence runn'g with a line of said S. 61 W. 745 poles, crossing the main right-hand fork of Mill Creek and two branches of the second right fork of the same, to a dog-wood; thence S. 25 E. 283 poles, crossi'g a branch of the said 2d right-hand fork to a maple; N. 65 E. 449 poles, to a poplar; N. 41 W. 350 poles, crossing the main right-hand fork of Mill Creek to the beginning.

Plotted by a scale of 200 poles to the inch. No var'ation.

132 WILLIAM MCDONALD,
JEREMIAH YORK,
Sworn. Chain Carrie's.

WM. AUGUSTUS SMITH,
Assistant to
SAM HANNAWEY, *S. M. C.*

A copy. Teste:

SAM'L MCGRAW,
Clk L. Off.

No. 410. 1,500 acres Harrison County. Ex'd, recorded and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents come, greeting:

Know ye, that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand four hundred and ninety-

nine, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savary de Valcoulen, ass'ee of Samuel Hannawey, ass'ee of Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or par-
133 cel of land containing fifteen hundred acres, by survey bear'ng date the seventeenth day of August, one thousand seven hundred and eighty-four, lying and being in the county of Harrison, adjoin'g Albert Gallatin's 35th entry on the south side, and extendi'g southerly, and bounded as followeth, to wit: Beginning at a white oak corner to Albert Gallatin's 22d survey, and thence on the line of said survey west eight hundred and fifty-two poles, crossing two runs to an ash; thence south thirty-two degrees east six hundred and sixty-six poles, crossing right-hand branch of Mill Creek to a white oak; north forty-one degrees east seven hundred and fifty-six poles, crossing the said branch and run to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Savary de Valcoulon and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esquire, governor of the commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed, at Richmond, on the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

134 Savary de Valcoulen is entitled to the within-mentioned tract of land.

JOHN HAUNE, *Re. L. Off.*

22s. No. 411. 10 Feb'y, 1786. Savary de Valcoulon. 1,500 acres. Harrison County. Ex'd, recorded, and ex'd.

Patrick Henry, esquire, governor of the commonwealth of Virginia, to all to whom these presents shall come, greeting:

Know ye that by virtue and in consideration of part of land-office treasury warrant number seventeen thousand four hundred and eighteen, and issued the twenty-seventh day of June, one thousand seven hundred and eighty-three, there is granted by the said commonwealth unto Savay de Valcoulon, ass'e of Albert Gallatin, ass'ee of Stephen Lacosta, a certain tract or parcel of land containing fifteen hundred acres, and by survey bear'g date the seventh day of , one thousand seven hundred and eighty-four, lying and be'ng in the county of Harrison, 1,200 poles southeast of Gallatin's 33d entry, and extending southeast and
135 bounded as followeth, to wit: Beginning at a poplar about 1,200 poles south thirty degrees east, from a post corner to Gallatin's 8th survey and corner to said Gallatin's 11th survey, and running with a line of said 11th survey S. 65 W. 849 poles, crossing a run to a white oak, and corner to said 11th survey, and thence south twenty-five degrees east two hundred and eighty-three poles, crossing a run to a post near a white oak; north sixty five degrees east eight hundred and forty-nine poles, crossing a run to a dogwood; north twenty-five degrees west two hundred and eighty-three poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Savary de Valcoulen and his heirs and assigns forever.

In witness whereof the said Patrick Henry, esq., governor of the

commonwealth of Virginia, hath hereunto set his hand and caused the lesser seal of the said commonwealth to be affixed at Richmond the tenth day of February, in the year of our Lord one thousand seven hundred and eighty-six, and of the commonwealth the tenth.

[SEAL.] P. HENRY.

Savary de Valcoulon is entitled to the within-mentioned tract of land.

JOHN HUNRY, *Re. L. Off.*

136 And on another day, to wit, on the 16th day of September, 1880, the following petition for an appeal was filed in this office, to wit:

U. S. circuit court for the district of West Virginia.

WILLARD PARKER, JR., *vs.* WILLARD PARKER AND LOT M. MORRILL. } In chancery.

To the honorable the Supreme Court of the United States:

The appeal of Willard Parker, jr., the complainant above-named and apel'ant, respectfully shows that on the 1st Monday of May, 1873, he filed his bill in the circuit court of Jackson County, in West Virginia, against Willard Parker and Lot M. Morrill for a partition between himself and said Willard Parker, of certain lands in Jackson County, West Virginia, held by them jointly or in common, and to remove a cloud upon the title of a portion of said lands created by a pretended claim for over 50,000 acres thereof, of the value of over $2,000, set up by the defendant Morrill; that on the 20th of September, 1873,

137 the said Morrill, by his solicitor, filed a special demurrer to the entire bill and also an answer to the same, traversing certain allegations thereof and setting up new matter in answer thereto; that on the 21st of March, 1874, the plaintiffs hav ng joined in said demurrer and filed a replication to said answer, and the cause having come on for hearing, the said demurrer was overruled and the cause set down for hearing on said Morrill's answer; and thereupon defendant Morrill filed an amended answer, to which plaintiff filed a replication.

And on the 21st July, 1875, the cause having come on for hearing, a reference was ordered by the court to take proof of certain facts put in issue by the allegations of the parties, respectively, in their pleadings as aforesaid; and under said order certain documentary proofs were submitted to the referee.

That on the 21st of September, 1875, and during the pendency of said reference, the said Morrill moved, in said circuit court of Jackson County, for the transfer of said cause to the circuit court of the United States for West Virginia, under the provisions, as your petitioner is informed and believes, of an act of Congress passed 3d of March, 1875, entitfled "An act to determine the jurisdiction of the circuit courts of

138 the United States, and to regulate the removal of causes from State courts, and for other purposes;" that upon said motion an order was made for the removal of said cause, and the record was transmitted by the State court to the Federal court, pursuant to said order.

And on the 21st of September, 1876, the complainant procured an order requiring said Morrill to show cause at the next term of said

United States circuit court why the said cause should not be remanded to the said circuit court of Jackson County, from which it had been improperly removed.

And on the 11th day of June, 1878, the clerk of the said circuit court of Jackson County returned, in obedience to a writ certiorari issued to him for the purpose that since the 5th day of March, 1875, a regular term of the said circuit court had been held in and for said county of Jackson, on the 15th of March, 1875, which had been closed on the 20th of March, 1875, and adjourned to July 19, 1875, and that another term had been held on said 19th day of July, 1875, which closed on the 21st of July, 1875, and that the said cause was removed to the Federal court at a subsequent regular term of said State court held on the 20th of September, 1875.

And your petitioner shows that on the 11th of June, 1878, the
139 said United States circuit court denied complainant's motion to remand the said cause to the said State court.

And afterwards, and on the 24th of September, 1878, the order of reference made by the State court not having been vacated, and no report having been made as to the matters referred by order of the State court, the said circuit court of the United States ordered and decreed complainant's bill to be dismissed as against said Morrill, and that complainant should pay to said Morrill his costs by him incurred both in the State court and in the Federal court.

Wherefore your petitioner, the said complainant, appeals from the whole of said decree, and also from the order of said Federal court denying complainant's application to have the cause remanded to the State court, and from all action of the Federal court in accepting jurisdiction of the cause under said transfer, and also of the order of transfer made by the State court. And your petitioner respectfully prays that the decree and order aforesaid of the said U. S. circuit court, and the bill, demurrer, answers, pleadings, evidence, and all other proceedings in said cause, including those for transfer to the Federal court, may be sent to the Supreme Court of the United States without
140 delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the decree of the said U. S. circuit court, and the orders appealed from, both of said court and of the State court, may be reversed with costs, and that such further order may be made in the premises as to said Supreme Court shall seem just.

Dated eighth September, 1880.

D. D. LERD,
Sol. for Appellant & of Counsel.

Allowed by—

HUGH L. BOND, *C't Judge.*

On which is the following endorsement, to wit:

U. S. AMERICA,
Southern District of New York, ss:

Isaac Frayner, being duly sworn, saith that on the eleventh day of September, 1880, he served the within appeal upon Hon. G. D. Camden, attorney for Hon. Lot M. Morrill, one of the defendants in this action, by deliver'g a copy of said appeal to said G. D. Camden, personally, at Wheeling, West Virginia, and leaving the same with him.

ISAAC FRAYNER.

Sworn to before me this 14th Sept., 1880.

[SEAL.] GEORGE B. DORSETT,
Notary Public, Kings Co., N. Y.

141 And on the same day there was filed a bond, in words and figures following, to wit:

Supreme Court of the United States.

WILLARD PARKER, JR.,
against
WILLARD PARKER AND LOT M. MORRILL.

Know all men by these presents that we, Willard Parker, jr., of the city of New York, and Benjamin F. Butler, of Scardale, Westchester County, New York, and Benjamin F. Butler, jun'r, of the same place, are held and firmly bound unto Lot M. Morrill, in the sum of two hundred and fifty dollars, to be paid to the said Lot M. Morrill, his executors or administrators; to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals; dated this seventh day of September, A. D. one thousand eight hundred and eighty.

Whereas the above-named Willard Parker, jr., hath prosecuted an appeal to the Supreme Court of the United States to reverse the
142 final decree rendered in the above-entitled action by the circuit court of the United States for the district of West Virginia:

Now, therefore, the condition of this obligation is such that, if the above-named Willard Parker shall prosecute his appeal to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

B. F. BUTLER. [SEAL.]
BENJ. F. BUTLER, JR. [SEAL.]

Sealed and delivered in the presence of—
FRANK F. VANDERHOOF.

SOUTHERN DISTRICT OF NEW YORK:

B. F. Butler and Benj. F. Butler, jr., the sureties in the foregoing bond, being duly and several'y sworn, depose and say, and each for himself deposes and says, that he is a resident and householder in the State of New York, and worth the sum of five hundred dollars, over and above his debts and liabilities and property by law exempt from execution.

B. F. BUTLER.
BENJ. F. BUTLER, JR.

Sworn to before me this 7th day of September, 1880.
FRANK F. VANDERHOOF,
Notary Public, Kings Co.

143 CITY AND COUNTY OF NEW YORK, *ss:*

On the seventh day of September, in the year one thousand eight hundred and eighty, before me, personally appeared B. F. Butler and Benj. F. Butler, jr., to me personally known, and known to be the individuals described in, and who executed the foregoing instrument and severally acknowledged that they had executed the same.

[SEAL.] FRANK F. VANDERHOOF,
Notary Publice, Kings Co.

(Endorsed:) Approved as to form and sufficiency of sureties, Sept. 8th, 1880.

HUGH L. BOND,
C't Judge.

U. S. OF AMERICA,
Southern District of New York, ss:

And on the same day was filed the following citation, with the endorsements thereon, viz:

By the honorable Hugh L. Bond, a judge of the circuit court of the United States to Lot M. Morrill.

Whereas Willard Parker, jr., has appealed to the Supreme Court of the United States from a decree lately rendered in the circuit
144 court of the United States for West Virginia, and certain interlocutory orders connected therewith made in your favor against him, and has filed the security required by law; you are therefore hereby cited to appear before said Supreme Court at the city of Washington on the second Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at Baltimore on the eighth day of September, eighteen hundred and eighty.

HUGH L. BOND,
C't Judge.

U. S. OF AMERICA,
Southern District of New York, ss:

Isaac Frayner, being duly sworn, saith that on the 11th day of September, 1880, he served a copy of the within citation personally upon the Hon. G. D. Camden, the attorney for Hon. Lot M. Morrill, one of the defendants in this case, by delivering a copy of said citation to said G. D. Camden at Wheeling, West Virginia, and leaving the same with him.

ISAAC FRAYNER.

Sworn to before me this 14th day of September, 1880.
[SEAL.] GEORGE B. DORSETT,
Notary Public, Kings Co., N. Y.

145 UNITED STATES OF AMERICA,
District of West Virginia, ss:

I, L. B. Dellicker, clerk of the circuit court of the United States for the district of West Virginia, do certify that the foregoing is a true transcript of the record and proceedings in the case of Willard Parker, jr., vs. Willard Parker and Lot M. Morrill, from the files and proceedings in my office.

In testimony whereof I hereunto set my hand and the seal of said court at Parkersburg, in said district, this 24th day of September, 1880.
[SEAL.] L. B. DELLICKER,
Clerk C. C. U. S., D. of W. Va.

(Indorsement on cover:) No. 589. Willard Parker, junior, appellant, vs. Lot M. Morrill. West Virginia C. C. U. S. Filed 1st October, 1880.

SUPREME COURT U.S.
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16-1

BRIEF OF APPELLEE'S COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 589.

WILLARD PARKER, JUNIOR, APPELLANT,

vs.

LOT M. MORRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF OF APPELLEE'S COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 589.

WILLARD PARKER, JUNIOR, APPELLANT,

vs.

LOT M. MORRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

IN THE SUPREME COURT OF THE UNITED STATES.

WILLARD PARKER, JR., VS. LOT M. MORRILL.

Notice.

To D. D. LORD, Esq., SOLICITOR AND OF counsel for Willard Parker, jr., in the case of said Parker,
vs.
LOT M. MORRILL, APPEAL FROM THE CIRcuit court of the United States for the District of West Virginia, pending in the Supreme Court of the United States.
} No. 589, OCTOBER TERM, 1881.

Please take notice that on Monday, the 15th day of May next, the defendant in error, Lot M. Morrill will by his counsel, move the said Supreme Court of the United States at Washington, D. C., to dismiss the appeal in said cause for want of jurisdiction and on account of other irregularities; or in case of failure to dismiss that the decree of the lower court be affirmed on the ground that the appeal has been manifestly taken for delay, and the question on which jurisdiction depends is so frivolous as not to need further argument, and that the matters alleged in the bill of the plaintiff in error as to the defendant in error Morrill, have been adjudicated by the said court in the case of James Armstrong and others, against the said Lot M. Morrill, reported in 14 Wallace, page 120.

GIDEON D. CAMDEN,

April 31, 1882. *Solicitor and of Counsel for Defendant in Error.*

Order.

The order which the defendant in error will move the said supreme court to make in the cause of Willard Parker, jr., plaintiff in error, against Lot M. Morrill defendant in error, upon the motion mentioned in the foregoing notice, is subjoined, and is in the words and figures following, to-wit:

WILLARD PARKER, JR., PLAINTIFF IN ERROR.
vs.
LOT M. MORRILL, DEFENDANT IN ERROR.
} No. 589, OCTOBER TERM, 1881.

Now comes Lot M. Morrill by his undersigned counsel, and moves the court to dismiss the appeal herein on the following grounds, viz:

1 For want of jurisdiction.

2 On account of other irregularities; or in case of failure to dismiss that the decree of the lower court be affirmed on the ground that the appeal has been manifestly taken for delay, and the question on which jurisdiction depends is so frivolous as not to need further argument, and that the matters alleged in the plaintiff's bill as to the defendant in error Morrill, have been adjudicated by this court in the case of James Armstrong and others against the said Lot M. Morrill, (case reported in 14 Wallace, page 120.)

Nov. 25, 1881.

G. D. CAMDEN,
Counsel for Lot M. Morrill.

Brief.

Brief of counsel of defendant in error on the motion to dismiss, for want of jurisdiction, the appeal pending in the Supreme Court of the United States, of Willard Parker, jr., against Lot M. Morrill, (No. 589, October Term 1881.

On the part of the defendant in error, it is contended that the appeal in this case should be dismissed.

1 Because the court has not jurisdiction it not appearing by the record or petition for the appeal, or otherwise that the matter in controversy is of the value of five thousand dollars, the amount required by the act of Congress of 1875 to give the Supreme Court of the United States jurisdiction by appeal or writ of error to judgments and decrees of Circuit Courts of the United States.

The controversy was by suit in equity respecting the title of various tracts of land, and the only reference to their value is a statement in the petition, that they were of the value of over two thousand dollars; see page 50 of the printed record.

The court is respectfully referred to the said act of Congress and the petition to show a want of jurisdiction.

2 It should also be dismissed because the appeal has been manifestly taken for delay, and the question for which jurisdiction is claimed is so frivolous as not to need further argument.

3 And also because the matters alleged in the bill of the plaintiff in error as to the defendant in error Morrill have been adjudicated by this court in the case of James Armstrong and others, against the said Lot M. Morrill, which was reported in 14 Wallace, page 120.

The court is also respectfully referred to the cases of
Hopkins *et. als., vs.* Ward *et. als.*, 6th Munford, 38.
Madison, *vs.* Owens, 6th Littell, select cases, 281.
Nichols *et. als., vs* Covey, 4th Randolph, 865.
Scott *et. als., vs.* Ratliff, 5th Peters, 86.
Kenna, *vs* Quarrier, 3d West Virginia, 212.
Hardman, *vs.* Boardman, 4th Leigh, 282.

Which were referred to in the opinion of the court delivered by Justice Clifford in the said case of Armstrong *et. als.* against Morrill.

GIDEON D. CAMDEN.

Solicitor and of Counsel for Defendant in Error, Morrill.

16-1

OFFICE SUPREME COURT U.S.
FILED
OCT 7 1882
JAMES H. McKENNEY, CLERK.

BRIEF OF APPELLANT'S COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 589.

WILLARD PARKER, JUNIOR, APPELLANT,

vs.

LOT M. MORRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

BRIEF OF APPELLANT'S COUNSEL.

SUPREME COURT OF THE UNITED STATES.

No. 589.

WILLARD PARKER, JUNIOR, APPELLANT,

vs.

LOT M. MORRILL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WEST VIRGINIA.

WILLARD PARKER, JR., APPELLANT,
vs. No. 589.
WILLARD PARKER AND LOT M. MORRILL.

Plaintiff's brief on defendants' motion to dismiss.

This action was in Chancery for partition of lands held in common by plaintiff and defendant Parker, and to remove a cloud resting on the title by a claim made by defendant Morrill.

The bill was filled on the 14th April, 1873, in the Circuit Court of Jackson Co., West Va.

Defendant Morrill demurred and answered:

21st March, 1874, the demurrer was overruled (63), and the cause was set down for hearing on the answer, and an amended answer filed by him on leave of the Court.

A regular term of the Court was held on the 13th March, 1875, and on the 20th March it was adjourned to the 19th July, 1875 (96).

On the 21st July, 1875, the case came regularly on for hearing, on the bill answer and amended answer it was argued by counsel, and the Court directed a reference to ascertain and report the titles of complainant and of deft. Morrill, and certain other facts (64).

On the 21st September, after adjournment of the said regular term, and pending the reference, the defendant moved a transfer of the case to the Circuit Court of the United States under chapter 137 of the Laws of the 43d Congress, 3d March, 1875.

A motion was made to remand the case to the State Court on the ground that it was not removed until after the term at which it could have been tried, this motion was denied (98.)

The case was afterwards heard in the Circuit Court of the United States on documents read by counsel of defendant Morrill, but without any report of the Referee, and on such hearing the bill was dismissed, and a final decree was entered from which plaintiff now appeals.

The appeal presents two questions for the decision of this Court, viz.: Whether the Circuit Court did not err in denying complainant's motion to remand the case, and whether the said Court did not err also on the merits in its final decree.

I.

The removal of the cause from the State to the Federal jurisdiction was erroneous, because it was not made, or applied for within the period limited by statute.

The statute is as follows:

Sec. 3. "Whenever either party, &c., entitled to remove any suit, &c., shall desire to remove such suit from a State Court to the Circuit Court of the United States, he may make and file a petition in such suit, in such State Court, *before or at the term at which said cause could be first tried, and before the trial thereof* for removal," &c.

The application was not made until 21st September, 1875, after a trial of the cause on matters of law had been hadon the demurrer, and after a subsequent trial on matters of fact had been actually begun and was in progress before a referee.

It is submitted that this application was not within the time limited by the act, and that the Circuit Court erred in not remanding the case on plaintiff's motion to that effect.

II.

It is objected that all questions involved in the action itself have been decided by this Court adversely to the complainant in Armstrong *ex.* Morrill, 13 Wallace, and consequently, that an appeal on the question of the propriety of removal would be useless, because the complainant could not recover in his action if the decree appealed from were reversed and the case remanded to the State Court.

There are several answers to this objection:

1st. If the removal was improper, then the action properly belonged to the State Court, which was improperly ousted of jurisdiction, and of its right to determine for itself whether or not the case is within the decision of Armstrong *vs.* Morrill. If the State Court should hold that it was not, this Court would not disturb its conclusion, even if, in the opinion of the members of the Court, such conclusions were erroneous. If, on the other hand, the State Court should conclude that the action was covered by Armstrong *vs.* Morrill, it would have the right to render its own judgment, to be enforced or controlled according to its own jurisdiction and practice.

The Federal Courts have not the authority to adjudicate actions pending in the State Courts, and it would be no justification for such arrogated jurisdiction, that its adjudications were correct and proper, and such as the State Court would have rendered if its jurisdiction had not been disturbed.

There is no tribunal to decide the question whether or not the State Court would have rendered the same decision as the Federal Court, and if the Federal jurisdiction in such cases is upheld, the result will be that every question of State law, including the construction of statutes, will be taken away from the State Courts and placed in the uncontrolled disposal of the Federal Courts.

21. The decision of the State Court would not necessarily have been governed by Armstrong *vs.* Morrill.

Two questions were involved in that case; one was, whether Armstrong's grantor had title to the land in question by virtue of a grant by the State under what is known in West Virginia as an "inclusive survey," and the other was, whether, if he had not title by this source, he had not acquired it by fourteen years adverse possession under the statutes of limitations.

If Armstrong had made out title by adverse possession, he would necessarily have had judgment, whatever might have been the opinion of the Court as to the scope and effect of an inclusive survey.

Now it seems impossible to maintain, if not absurd to allege, that because in April, 1857, when Morrill brought suit, Armstrong's grantee had not acquired title by adverse possession, he could not have acquired it in April, 1873, when the present action was instituted. And if on the reference directed by the State Court or otherwise, Dr. Parker's title to the land not included in the Armstrong suit had been made out by adverse possession, the opinion of the Court as announced in Armstrong *vs.* Morrill, as to the legal effect of the inclusive survey, or as to the insufficiency at that time of the adverse possession of the 1,500 acres, then sued for, would have been no ground in the State Court for denying the belief announced in the bill of complaint.

III.

The appellant desires also on this appeal to submit to this Court that the decree of the Circuit Court was erroneous, and that the effect of a grant by inclusive survey has been held by adjudication of the State of West Virginia to include all exising rights of the State to the land granted and all rights subsequently acquired by the State by forferture for non-payment of taxes.

This question being exclusively a question of the construction of the statutes of West Virginia, this Court would not, it is presumed, hesitate to assimilate their own decision as to the effect of such a grant to the construction given to it by the Courts of the State.

24 Howard, 427, Suydam *v.* Williamson.

The knowledge that the decisions of the State Courts would have sustained complainant's title is the only assignable reason for its transfer to the federal tribunal.

IV.

The objection that the Court has not jurisdiction because the amount does not exceed $5,000 is not well taken.

1. The Rev. Stat. sec. 691, gives jurisdiction whenever the amount exceeds $2,000.

2. The contest is as to the ownership of over 200,000 acres of land in West Virginia, to which it is impossible to assign a value which will not bring it over $5,000.

The jurisdiction in Morrill *v.* Strong was based on the value of only 1,500 acres of the same lands.

3. The consideration for which a portion of the land was sold in March, 1854, as appears by the deed from Clark to Campbell, was $8,000. (Fol. 35.)

4. The consideration which complainant paid for an undivided twentieth part was $2,000. (Fol. 45.)

D. D. LORD.

Of Counsel for Appellant and to oppose motion.